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MARITIME WARFARE.

T. G. BOWLES.

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MARITIME WARFARE.

BY

THOMAS GIBSON BOWLES.

SECOND EDITION.

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PREFACE TO THE SECOND EDITION.

At a time when men's minds are agitated by the question whether England will be forced to declare war, it appears to be opportune to bring out a second edition of this work, dealing as it does with the question how far England can make war, in case she should declare it, under the enormous disadvantages inflicted upon her by submission to the Declaration of Paris.

That by this Declaration a serious loss of power has been imposed upon the country has now been admitted even by those who approve of it on some other grounds. To exhaust all the questions that may be raised around this point has not been my

object; but I have endeavoured to lay down the principles of public law and to summarise the facts affecting it, as well as to indicate all the sources whence fuller facts and arguments may be derived by those who still care to inquire whether the power of England at sea has or has not been diminished, and whether it is or is not of any importance that that power should be regained.

T. G. B.

Creyle Lodge,
Hyde Park Gate.
27th March, 1878.

PREFACE.

THIS work embodies an attempt to summarise the arguments bearing on the right of search for and the seizure and confiscation of enemy's property found on the high seas in time of war. The arguments scattered through the writings of the publicists have been in a succinct manner collected, collated, and set down, together with such as have elsewhere been produced; and to these have been added, it is hoped, some which, being new and so far without better authority than that of the author, are presented diffidently. In addition to this some documents are given,

some authorities indicated, and some extracts made, which will, as is hoped, help to lighten the task of the many Englishmen who are now asking themselves in what Maritime Warfare consists; whether by the Declaration of Paris of 1856 it has not been rendered an illusion; and whether that Declaration, so long as it remains unrepudiated, does not fatally impair the strength in war and consequently diminish the dignity and security in peace of all maritime nations, and especially of this nation of Great Britain.

T. G. B.

February 1877.

MARITIME WARFARE.

INTRODUCTION.

WAR consists in the lawful use of force by one nation against another. That it should ever be necessary to use force either between individuals or between nations is lamentable: that it is sometimes necessary cannot be gainsaid. Every nation as well as every individual not only possesses the right, but is under the duty of resisting violence by force; otherwise violence must become the only law of the world. And when we find as we do, nations which do not merely practice violence, but openly defend it and avow that nothing short of force shall restrain them from it, it especially behoves us to look to the means we possess of resisting that violence, when it is, as in the course of time it may be, directed against ourselves. That the people, or at any rate, that the Government of Great Britain have shown themselves desirous to avoid war of any kind, except it be in the shape of facile expeditions against weak and barbarous tribes, is certain; but what is equally certain is, that the desire to avoid war cannot alone be sufficient to

secure its avoidance. The honour of the Empire may be thought an inadequate reason for putting its interests to the hazard of an armed conflict with any European State ; but if it once be felt that its interests themselves are gravely concerned, then it neither would nor could be held possible to sacrifice them without a struggle.

It seems indeed as though no question short of that of the absolute existence of the British Empire would cause the British people, or induce any British Government to embark in a European war. And this it is which makes it a matter of such vital necessity that nothing should be omitted to place the country in a position, when the time comes, to exert the whole of its strength.

For, if it be that we shall never fight again with any Great Power unless for our very existence, we are already foredoomed to destruction unless when that conjuncture arises, we are found in a position to put forth all those fighting powers which Nature has placed within our reach.

With those who believe, or who, because they desire it, affect to believe, that England will never again be driven to draw sword in a great struggle, it were needless to argue. History from the earliest to the latest times teaches us that, among States as among individuals, there are those which propose to themselves the removal of their neighbour's landmarks and the acquisition of their neighbour's property by methods of fraud or of violence. Such

are only in the last resort to be constrained and resisted by force, and it were madness to suppose that, now for the first time in the history of the world, all necessity has finally and for ever disappeared for so constraining and resisting them.

It is sufficient indeed to say that war has not yet been reduced to an impossibility in order to show that its possibility cannot be disregarded. And if it be that Great Britain will not again go to war unless it be for existence, then is it our duty now more than ever to omit nothing that can enable us to defend that existence by war, if ever we are driven to it. The British Empire is the most splendid prey in the world, and if it be found without defence the most tempting; by so much the more therefore does it behove us to ascertain what arms Nature has placed in our hands for defending it, and to be sure that we keep those arms in an effective state against the evil day.

We who live in Islands have not to choose what or where our defences shall be. Nature herself which has brought to our doors the waters that wrap the earth, has taught us plainly that by the sea alone shall an enemy reach us or we him. She has taught us that the sea is the gate and the rampart of our house, and the waters our battle-field, from which none can debar us, and which while we hold them, as we may, are our sure barrier against the world. If there be methods of

making war at sea so effectual that they can reach and paralyze the very heart of land-locked nations remotely seated in continents; if there be means of opposing sailors to soldiers and fleets to armies so powerful that to control the seas is to coerce the land; then indeed the British Empire may be secured against all danger from without. If not; if it be that, from any cause whatever, we are found impuissant at sea, and unable by acting there to produce any impression, then the days of the British Empire are numbered. The invasion of England itself is not impossible; it is not even difficult; we have not and never can have an army any way comparable in point of numbers to that which any first-class Power could bring against us. Conscription and universal military service never should be and never can be established in England, unless it be by an alien invader after and as a result of the conquest and extinction of the country, as an independent state—when indeed these islands would become as fine a recruiting ground as Germany has found Poland to be, and Russia the Cossack territory. But even if it were established by ourselves for ourselves, it would not materially mend matters. It has been said, "the English infantry is the best in the world, luckily there is not much of it," and it is indeed *because* there is not much of it that it is the best, *because* it does not forcibly enrol those who are fitted only for peaceful avocations, and

invites those alone who have the taste and capacity for a soldier's life. If we were to take the operatives from every town, every tailor from his board, every ploughman from his plough, and every clerk from his desk, we should indeed increase the numbers of our army, but it would be at the expense of its fighting power. Putting aside therefore the probability that neither conscription nor any system of universal military service would be endured, we may easily conclude that what we must be content with in land forces is a small but efficient army. One numerous enough to cope with that of any of the first-class Powers we cannot look for and should not desire ; one large enough to act as a powerful auxiliary to our maritime force, and to furnish if necessary contingents for continental service, we may have on terms which will still make it the best in the world.

Very different are matters when we look to our great and natural defence the sea. On this it is as easy for us to be the strongest in point both of numbers and of quality as it is impossible on land. The mere fact that our seafaring population is far greater than that of any other nation is enough to establish this; and standing beside that fact and doubling its importance, is this other—that while every landsman is not fit to fight, every seaman is fit. Indeed, if taken all round, our land population is probably less fitted than that of other

nations to undergo the fatigues and privations of war; so that the fighting power to be got out of it is less in proportion were it all drained into the army, than is to be got out of nations whose main work is on the land. And this is precisely because in a maritime nation like ours the flower of its manhood is always found in the seafaring classes. The sea has no place for any but strong, bold, and daring men, and it is of such alone that good fighters are made. To compare our land population with that of other nations, for numbers only, is therefore fallacious in one way because a large proportion of the best of ours have been taken out of the land for the sea, while the best of theirs remain; and to compare our seafaring population for numbers with theirs is equally fallacious in another way, for seafaring is our principal business and takes our best men. It is true that on the land we are the weakest of all Powers; it is equally true that at sea we are the strongest; and it follows that we must mainly if not alone rely for our defence upon the power of waging war effectually at sea. Equally does it follow that we must rely upon this mainly if not alone for our tranquillity, which is in these days more than ever dependent upon the knowledge that we are armed and able to keep our own.

And it follows above all, that if we content ourselves with the power of waging this war other-

wise than effectually, our seeming defence is a real snare, and we the present sport and future victims of a fatal hallucination.

The subjects with which I propose to deal appear naturally to range themselves under two heads—first, there is the general question as to the true nature and the lawful methods of Maritime Warfare, as they are shown by Reason, by the Law of Nations, the consent of the Publicists and the practice of States; and secondly, the especial position of Great Britain at this time with regard to Maritime Warfare. I divide this book therefore into two parts, of which the first is a chapter of International Law and the second a chapter on National Policy.

PART I.

I LAY down the following propositions, which I shall proceed to consider seriatim:

I.—That war can only be waged effectually at sea by the capture of the enemy's property.

II.—That by the Law of Nations every State when at war has the right to capture its enemy's property at sea, of whatever nature it be, and in whatever vessels it is found.

III.—That every State has also a right by the Law of Nations to arm and commission private vessels as an auxiliary to its naval force, and to the effectual development of the whole fighting power of the State.

IV.—That the exercise of the right of seizure and confiscation, whether by State vessels or commissioned private vessels, while it is the most effectual, is the mildest and least cruel of all methods of making war.

PROPOSITION I.—THAT WAR CAN ONLY BE WAGED EFFECTUALLY AT SEA BY THE CAPTURE OF THE ENEMY'S PROPERTY.

Warfare in its practice consists in doing as much material injury to the enemy as is necessary to reduce him to submission. It is effectual in

proportion to the injury done to him. If no injury be done by it, it is absolutely ineffectual.

On land the injury is effected by invading the enemy's country, by capturing towns and cities, and occupying provinces, by seizing and destroying property whether public or private, by cutting off or appropriating the taxes, and by thus depriving the Government of the enemy of the resources, whether of men, of *matériel*, or of money, on which it must rely for resistance, and bringing it to that point of exhaustion when it will have no resource but submission. The destruction of men in battle is but a means to this end; for the object of war is not to depopulate a nation but to reduce its Government to submission, and no victories in the field, no feats of arms, are of any avail whatever except in so far as they tend to bring about this result.

On the high seas there is no enemy's country to invade, there are no towns to capture, no provinces to occupy, and no possibility therefore of injuring the enemy by any of these methods. But there is property to capture, property of the most valuable kind and in the most convenient form, and the capture of which is certain therefore to inflict a very serious material injury upon the enemy, and thus to diminish his resources for carrying on the war. Just as victories in the field are barren or even injurious to the victor if they produce no effect on the enemy's material resources, so also

are naval victories barren or even injurious if they leave these unaffected. And as the material resources of the enemy on the high seas consist solely in the property that is found in course of transport thereon for his supply and succour, if this property be left to go free no material injury whatever can be there inflicted upon him. The bombardment or capture of fortresses and towns, or the disembarkation of troops, on an enemy's coast, is of course another matter ; but this is not properly maritime warfare at all, but land warfare, proceeding by the same methods and having the same material results as the ordinary operations of that warfare, and it is precisely because it produces material results that it is efficacious.

A system of warfare on land, if any such could be conceived, which should affect the armies alone of the enemy, and which should at the same time leave his territory and property unaffected, would be absolutely ineffectual; and this is the case with any kind of maritime warfare that does not propose and include the capture of property at sea. Without this, the blockade of a port amounts to no more than the massing of troops on a frontier, a naval victory to nothing more than a barren boast, the supremacy of the seas to nothing more than a phrase, a vain exhibition of force incapable of being used to the injury of the enemy. But if property be captured then is the enemy invaded in reality, then the subject suffers, the taxes fail,

the material resources are diminished, the injury in short is inflicted and the war is effectual.

That a nation at war has the right to seize its enemy's property, arising from and founded upon the state of war, has never been questioned. There are those indeed who would have this right altogether abandoned at sea, who claim that war shall exist between two nations on land but not for their merchants at sea; that requisitions of property, nay that the capture of whole towns and cities and the destruction of whole armies shall be lawful on one element, and that, nevertheless, every bale of goods shall be sacred on the other; who hold that private property is more sacred than private life, and that the money a subject pays in taxation is in some sense less his private property than the goods he sends to sea on an adventure.

Those who advocate this view argue that peaceable traders should not be prevented from carrying on their trade at any time; as though the trader over seas were in some way less a native of his own country and less bound to render it assistance and to bear its burdens in its extremity than the rest of his fellow-countrymen. They are not ashamed to claim that taxes shall be levied on the nation at large, that many thousands of its inhabitants shall be sent forth to give their lives in battle, and that the merchant alone shall nevertheless be neutralized and enabled to make even larger profits than in the time of peace he does, by

the very event of the war. The merchant, however, is entitled to and can claim no better or other treatment than the rest of his countrymen. When his Government declares war he is at war together with all his fellows of the nation; and whatever be the individual sacrifices necessary for the national success in the war, he is bound to make them as much as anybody else. And if it be true, that war can only be effectual at sea when it is directed to the seizure and confiscation of property, what shall we say of those who, professing to speak for "civilization," claim that their country should give up the power of capture from the enemy in order that they may be protected from capture by the enemy?

If the merchant is to claim exemption from the war for his goods on the seas, every taxpayer may equally claim it for the money in his pocket; nay, the very soldier may claim it for his life. For the answer to each one of any such claimants is the same—that they belong to and owe aid to their country; that they must in its extremity make such sacrifices, each in his degree, as are necessary; and that the incidence of the war must be borne, whether it falls on the private goods of the merchant, on the private money of the taxpayer, or on the private life of the soldier. Each of them belongs to and forms part of the nation, and none of them can refuse to the nation the especial sacrifice which the necessities of the war may call

for. If one must give his goods, the other his money, and the third his life, it is but in order that the goods, the money, and the lives of the rest of their fellow-citizens may be secured to them. Such sacrifices in such a cause no good citizen can refuse without abjuring his citizenship, and those who set up a claim to be personally at peace while they are nationally at war, do in effect claim to go out from their country and not to be of it.

If those who make this monstrous claim would or could abolish war altogether, it would be well; but until that is done, those who claim that a special class of citizens should be specially exempted from the burdens of a war in which their country is engaged, perhaps for its very existence, must be held as preferring the personal profit of individuals to the common weal.

But the absurdity of this suggestion—for the common sense of mankind has hitherto prevented it from becoming anything more—that "private property" should be "respected" at sea cannot be more strongly shown than by the light of the practice of warfare on land. The same principle of treatment applies to both, for it springs from and is built exclusively upon the existence of the declaration of war, the effect of which is to declare enemies the whole of the subjects of the enemy's nation, and all their property confiscate. It renders lawful, strictly speaking, the killing of

all those subjects, and the capture of all their property, whether on land or on sea. In practice, indeed, there is far less hardship inflicted by capture at sea than on land. For at sea the property is more concentrated; it is found in cargoes necessarily of value; is the property of individuals necessarily possessing capital; is in charge necessarily of robust men, and is not immediately essential to the maintenance of their existence. On land matters are very different. Property there consists of the poor man's field and cattle, of his little store and his few utensils, even more often than of the broad lands and plentiful store of the rich; and those found in charge are often, if not generally, old men, women and children. It is manifest, therefore, that in any case it is not possible to inflict so much hardship by seizing or capturing private property at sea as by occupying it or capturing it on land. Nevertheless it is claimed that it shall be respected at sea, while it is not respected on land. On land, indeed, war not only never has been, but never can be, made on the principle of respecting private property. For it is impossible to march an army without violating private property, without traversing private fields, forcibly occupying private houses, and forcibly appropriating private forage and provisions. Nay, no Government can make war at all except by taking its own subject's private property in the shape of taxes. Wars are waged

by taking private men from their homes, and making them fight public battles, and by taking private earnings from those who remain in order to support those who go forth. Battles are not fought by ministers, or even by Governments, but by private monies and men, diverted, without any "respect," from private purposes to public uses; and since even the life of the soldier is his private life, it is apparent that there neither is nor can be any method whatever of reaching public property except through private, or of acting on Governments and Nations except through individuals.

Warfare in short can nowhere touch property in any way without touching the private man. And not only is it private property and private life which feed the war while it exists; it is also private property which pays the ransom when it is over. When a country is conquered, its Government is conquered, and therewith the control over all the private property in the country; and thus it was that, at the end of the Franco-German War, the means was acquired of drawing from France a ransom of two hundred millions, every *sou* of which was private property. This being so, it is apparent that no "private property" belonging to individual citizens of a nation at war can claim or receive respect from their national enemy; and it is still more apparent that it cannot claim it at sea where the hardship is least, since it never obtains it on land where the hardship is greatest.

But even those who argue that "private property" at sea should be specially exempted, as none other is, from the effects of the war, do not deny that to subject it to those effects is an effectual method of making war. Neither has any Government ever been found to accept, still less to act upon, the proposition that property shall be exempt from capture. Reason indeed shows, and experience has proved, that unless property be made the primary object of maritime warfare, there can be no maritime warfare at all. The instances of the Russian and of the Franco-Prussian War, which were carried on upon the principle of *not* making it an object, are sufficient to prove this; while the American Civil War equally proves that seizure and confiscation of property at sea do inevitably draw with them also war at sea. The reason is plain. War on land cannot be declined. It must and can only come in the form of an armed invasion of territory which cannot but be resisted, for not to resist this is to accept national extinction. But if "private property" be held sacred, and public vessels alone be regarded as proper objects for the exercise of the rights of war, war at sea may be declined. Any Power fighting with another and conscious of naval inferiority may, as Russia did in 1854 and as Prussia did in 1870, keep its vessels safely in its ports, under the guns of forts, behind torpedoes and out of the reach of any but a land force. The greater the infe-

riority, the greater of course is the determination not to risk an encounter. This, it may be said, goes to prove that all naval warfare is impossible except between two States equal in maritime power, and that it is especially impossible for any State which, like Great Britain at the present time, is superior in line-of-battle ships to any other nation. And this indeed is true unless there exist means of forcing the enemy to come out and fight; this has been true in the cases quoted because those means were not employed. For they do exist, and they consist simply in laying hands upon such property of the enemy as may be found afloat.

Then indeed there is a reason, and an imperative reason, for the adventure to sea even of an inferior naval force; for then it becomes a question of money, a question in other words of retaining the power to carry on war in any form. Then the naval supremacy of a State amounts to something, for it amounts to the power of stopping supplies to the enemy from the whole world beyond sea, while at the same time it provides supplies for the state itself, under the sure protection of its superiority at sea; or if the supremacy be doubted or denied, it forces the enemy to come out and to fight in the defence of his sinews of war, and makes maritime war a reality indeed.

But now if private property be exempted on the seas from the incidence of the general confiscation pronounced by the declaration of war

against all the property of the enemy, what remains of maritime warfare? The object of cruising vanishes, for there is nothing to cruise for that can be touched when it is found. The whole utility of the right of blockade, together with the possibility of cruising, equally vanishes, for the whole and sole object of blockade is to prevent the enemy from receiving through the blockaded ports that assistance which he derives from the introduction into and the issue from them of "private property;" the power of intercepting even contraband of war vanishes also, for the contraband of war is private property and cannot be touched. The power indeed of landing expeditions on an enemy's coast is retained, but this is not maritime warfare, it is merely the transport of forces for land warfare. Of maritime warfare, properly so called, there remains indeed nothing whatever beyond and excepting the possibility of engagements between fleets. But this is precisely the form of conflict which the weaker power, as is evident, and as Russia and Prussia have already proved in fact, will carefully avoid. There is no commerce to protect, no blockades to raise, "private property" is inviolable, and the commerce, which is so valuable and so necessary that any effort must be made to protect it, requires no effort at all since it protects itself. For there is nothing to fight for except glory, and no reasonable prospect of gaining any glory by fighting, but quite the reverse.

No naval commander not insane would risk a conflict under such circumstances in so utter an absence of any object, and he would keep fast in port viewing with compassion rather than respect his stronger enemy, who might scour the seas declaring that he ruled them, but could neither do any injury nor produce any effect whatever upon the issue of the war. The effect of all which must be that the stronger a nation at sea, the less opportunity would it have of putting forth its strength, and that the larger its fleet, the more certain would it be that that fleet would be reduced to the most helpless and utter inaction. In short, to affect to wage war at sea without capturing property is to wage no war at all, and to make of the strongest fleet the least effectual arm—for the stronger it proved and was known to be the less possibility would be afforded to it of using its strength.

Of what avail can it be that the flag of any State is found in every sea all over the world with no other to challenge it, if from every sea all over the world the enemy of that State is nevertheless allowed freely to draw supplies with which to carry on the war. Of what avail is it to possess a navy that finds no adversaries? Of what avail to make war at sea at all unless by it an injury is inflicted upon the adversary?

The question is answered as soon as stated.

No publicist or statesman who has ever seriously

considered what war is, has ever been so foolish as to propose that property either public or private should be exempt at sea any more than on land from the effects of the war. It always has been, it still is universally admitted that in war the property of a belligerent is liable to capture at sea by the other belligerent, and those alone have questioned it who assume to condemn war altogether, and thus stand altogether outside of the question, which is how war is to be carried on assuming that it exists. But although the principle is, as it must be, admitted as being beyond all dispute, a device has been contrived by which the principle is denied in practice and made of no effect. It is indeed this device alone which requires any extended consideration, for while it is abundantly clear that without the capture of property on the seas there can be no maritime warfare at all, it is also universally admitted that in time of war belligerent property is liable to capture on the seas as on the land.

PROPOSITION II.—THAT BY THE LAW OF NATIONS EVERY STATE WHEN AT WAR HAS THE RIGHT TO CAPTURE ITS ENEMY'S PROPERTY AT SEA OF WHATEVER NATURE IT BE, AND IN WHATEVER VESSELS IT BE FOUND.

When a presumptuous Swiss banker affirmed at the Geneva Tribunal for the settlement of the

Alabama claims, "that there was no such thing as international law," he uttered an impertinence as great as he would be guilty of who, seeing that many murders are committed, should say that the law of homicide does not exist. The law of nations does exist, it is the law of Nature, of Reason, and of Justice applied to the dealings of nation with nation; it is admitted to exist by the very fact that every Government, even when in flagrant act of aggression, claims to be acting on the dictates of nature and of justice; and it is to be found in the writings of the great publicists, and in the lawful practice of nations; precisely as the rule of upright life is to be found in the common law of every country, and the practice of its citizens.

Now the law of nations allows war for the resistance of aggression and the prosecution of a right, at sea as well as on land, and it consequently must and does allow the effectual prosecution of that war by the infliction of injury on the enemy through the capture of his property. For it allows the destruction of life and cannot therefore but allow the capture of property. If it allows the taking of life it must allow the taking of property. Nor has there ever been, nor is there any dispute that it does allow this. But the point to be observed is this — that unless a belligerent may take his enemy's property out of neutral as well as hostile vessels he is practically debarred from taking it at all, since his enemy can,

and for the sake of avoiding risk undoubtedly will, ship his goods under the neutral flag as long as the war lasts. When this is remembered the importance of the point becomes at once apparent.

Let us first examine the reason of the matter, next consult the authorities upon it, and finally ascertain what the practice has been with regard to it.

The reason of the matter is this:—A nation when at war has the right to injure its enemy, both in his person and in his property, wherever it can find him, and those only can contest this who contest the right to go to war at all. A belligerent therefore has the right to inflict injury by capturing his enemy's property, for he has the right to inflict it by taking his enemy's life. But while this is admitted, it is said that the neutral has a conflicting right, the right, namely, to carry on his commerce as freely as he is accustomed to do in time of peace.

With this neutral right it is said the belligerent must not interfere any more than the neutral must interfere with the right of the belligerent. And, moreover, it is argued, the belligerent cannot interfere with it since a neutral ship is held to be neutral territory which cannot be violated.

Now if it were true that there were two rights, and if they conflicted as is said, there can be no doubt as to which of the two should have the preponderance. The belligerent has his existence, for

that is the final stake in war, to defend; upon the exercise of his powers of offence depends his power to defend it, and just in proportion as he is shorn of these so is he brought near to destruction. Not so the neutral. He is secure since no man assails him; if his right be touched, nay, if it be overthrown altogether, no harm can come to him beyond a temporary loss of profit ending with the war which, if it be so, occasions it. And if it were true that a nation defending its existence by the exercise of a right must by exercising it cause a temporary diminution in the profits of a nation in no peril of its existence, the law of Reason and of Nature must allow and sanction the injury.

But the argument does not rest upon this ground. It rests upon the very nature of neutrality itself. Neutrality consists in standing utterly aloof from taking any part whatever in a struggle between belligerents. It consists not in impartiality in the conflict but in abstention from it; and this shows us at once that a neutral cannot have any rights at all as a neutral; for no rights can accrue to him out of a conflict with which he has nothing to do. He retains the common rights that all nations have in time of peace; he neither does nor can gain any new rights; but he has also, arising out of the war, the obligation of his neutrality which lies in this, that he must now exercise his common rights so as not to take any part in the war. He has no new rights, but he has a new duty, that of

complete abstention from the conflict, and unless he fulfils that duty he ceases to be neutral.

It is undoubtedly true that the existence of war brings with it certain grave inconveniences to the neutral State, such as before it was not exposed to. It is debarred from entering blockaded ports, it is debarred from free-trade in war materials, and it is held bound to exercise a diligent watch over its subjects to prevent them from taking active share in the war. These inconveniences and this duty are entirely new, and arise solely out of the state of war; yet by universal consent and practice, as well as by reason and justice, they are sanctioned and declared to be inevitable accompaniments of war. The rights of a State fighting for national existence are by them admitted and declared to be superior to the convenience of a State trading for individual profit, and no voice has ever yet been raised to claim that, in the instances cited, the convenience of the neutral should be preferred to the rights of the belligerent. The principle is therefore clear, that when a war arises even the common rights of the neutral are subject to limitation in their exercise so far as that limitation has now become necessary from the new state of things, in order to secure that the neutral shall be neutral and shall abstain from the war.

But while in the cases cited the limitations of the neutral's common right in ordinary times has been admitted, accepted and established in all times, a

claim has nevertheless been set up that in one respect, and that the most important, his common right shall be, not merely exempt from limitation, but that by the very event of war which limits all others this shall be exaggerated and receive new and greater proportions than ever before it had. It is conceded that by the event of war, the neutral is bound by new duties with regard to his own commerce; but it is contended that he acquires new rights with regard to the commerce of the belligerents. It is allowed that he is bound henceforth to place new limitations on his own trade, but it is alleged that he is entitled to enjoy new privileges in the trade of the belligerents. It is admitted that he has no right to protect his own subjects or their property from the lawful operations of the war, but it is pretended that he has a right to protect the property of one belligerent against the other.

To this and to no less amounts the claim which has been raised, that a neutral has the right to carry belligerent property over the seas in time of war, and to secure it from capture by the cover of his flag. The question at once arises, whether this is in consonance with the duties of neutrality? A moment's reflection will show that it is a flagrant violation of them.

For it is a claim to extend to property of one or of both belligerents a protection which the belligerent cannot provide himself. It is a claim to

give to neutral bunting a force not found in belligerent arms. It is a claim not to continue the exercise of the general right to trade peaceably, which existed before the war, but to protect and to transmit property liable to the effects of the war. It is a claim to a traffic which did not exist before the war and which is only made possible by it. It is a claim to withdraw belligerent property from belligerent risks for neutral profit. It is a claim, in short, to protect the most vulnerable part of one or of both belligerents, and therefore to take part in the war, which is the negation of all neutrality.

The right of a neutral to trade with a belligerent though it has sometimes been denied, cannot be contested, his right to security against injury in his own property other than contraband of war, even when taken to or brought from a belligerent port not blockaded, is not to be impugned. But that is very different from the claim set up that he shall be allowed to cover with his flag property not his own, but that of a belligerent. In such property he has no interest whatever beyond the freight he earns for carrying it. It is in its nature undoubtedly and beyond all question liable to confiscation by the other belligerent, and the neutral if he be honest in his neutrality, can have no desire to relieve it from its natural liabilities. The case of contraband of war and the unquestioned rules applying to that, show clearly the

principle applicable to this. Thus no neutral is allowed to protect from capture by his flag arms, ammunition, or contraband of war in general, when destined to a belligerent, not even if at the time of capture they be *bonâ fide* his own property. How then is it to be supposed that he can justly claim to be allowed to protect belligerent property? Contraband of war destined to a belligerent is no more liable in its nature to confiscation than property belonging to the belligerent; so long as it is in the neutral country it is not contraband at all, and it only becomes so on the high seas from the fact of its being in transport to the belligerent. It is the carrying to the belligerent destination, and the carrying alone that gives the contraband character to what would be free and innocent had it remained in the neutral territory.* Yet contraband of war even when the property of the neutral is left to confiscation without any attempt at protection whenever it is intercepted by the other belligerent in neutral vessels. How much more then must belligerent property be so left. If contraband of war, which is only confiscable by reason of the incident of transport, be liable to

* Sur un territoire neutre il n'y a pas de marchandises de contrebande; toutes y sont libres. Elles ne deviennent contrebandes qu'ou moment où elles en sortent avec direction pour un lieu dont leur nature les exclut." Massé. *Le Droit Commercial dans ses rapports avec le droit des Gens.* See also Lampredi, Wheaton, Ortolan, and Heffter, and Pratt *On Contraband.*

capture, how much more must belligerent property which is confiscable by its very nature be so. The state of war gives the belligerent the right to capture contraband of war destined to his enemy; the state of war gives him an equal right to capture property belonging to his enemy; one right is as undoubted as the other; it rests upon the same principle and is justified by the same sanctions. How can the neutral admit the exercise of the one even when it deprives his own subjects of their property and resist the other when it touches property in which he has no interest? He may indeed permit his subjects to carry on both kinds of traffic, but if he is precluded from protecting them in the one kind when intercepted, he is equally precluded from protecting them in the other. He may permit both kinds of traffic to be carried on under his flag, but he cannot assume to protect either by his flag from the exercise by the belligerent of his right to confiscate whenever he can intercept. To do this is to give aid to the belligerent, it is to cease neutrality and begin belligerency.

It is no answer to say that the neutral is ready to do the same by both sides; for he is bound to do it by neither. His duty is completely to abstain. And it has never been disputed in principle that the belligerent has the right to claim such complete abstention even if the claim amount to one of interference with the usual trade of the neutral himself.

But except in the case, impossible to suppose, that both belligerents are exactly equal in maritime strength in all waters, the neutral cannot give an equal advantage to each by carrying and covering the trade of both. Whenever and wherever the belligerents are unequally matched on the seas, the stronger of the two is able at once to carry his own trade, and to prevent the other from carrying his. Not only does reason prove that this must be, but history shows that it is so.* And it follows therefore that so far from a neutral giving equal aid to both belligerents by carrying their property and protecting it from capture, he gives the greatest possible aid to the weaker, and inflicts the greatest possible injury upon the stronger of the two. He gives to the weaker protection to his weakness; he debars the stronger from the exercise of his strength. In other words he ceases to be the neutral, and takes up a direct part in the war. He steps in to prevent one of the two belligerents from being reduced to extremity, and thus prolongs

* In January 1799, during the war between England and France, the French Directory informed the Consul des Cinq Cents:—"It est malheursement trop vrai qu'il n'y a pas us seul vaisseau marchand naviguant sons pavillon français—quel autre moyen d'exportation avons nous, que l'emploi des vaisseaux neutres."—*Code des Prises*, Tom. II., p. 385. See too appendix to *Robinson's Admiralty Reports*, p. 378, vol. 2. Again in 1805—"There was not a hostile mercantile flag, a few coasters excepted, to be found on the ocean."—*War in Disguise*, pp. 71 and 229.

the war, so that if this neutral claim were allowable, war might be made interminable by the mere act and for the mere profit of States which are bound to take no part in it.

The fiction of a vessel being a part of the State to which she belongs has been sometimes raised here to bar the right of the belligerent to capture. To this scarcely serious argument it would be enough to reply that if a neutral ship be in all respects a part of a neutral State, and entitled to the same inviolability, yet at any rate it cannot be entitled to more respect or to greater privileges than the territory of which it is assumed to be a continuation. Nevertheless here we have much more claimed for it; for it actually carries the property liable to capture from one part of the world to another, which the State itself does not and cannot do. Belligerent property is doubtless safe in neutral territory, as well it may be, since it is dormant and far from the hand of the belligerent, and being in neutral territory brings no increase of power to him. Yet it is none the less under the general sentence of confiscation pronounced by the declaration of war, it is only that the execution of that sentence is stayed so long as the property is as it were asleep. But the instant it is brought into activity by passing the neutral frontier line, the sentence at once takes effect, and the property becomes immediately confiscable. The neutral State merely holds condemned property in

trust for the belligerent owner; but the neutral ship carries it to that owner. As long as it is in the neutral State it is necessarily dormant, and of no moment; but as soon as it begins to traverse the high seas in the neutral ship it becomes active and of great moment. The claim of the neutral that his territory shall protect from immediate capture condemned property which is separated from the belligerent is good; but it is a far different and greater thing to claim that the neutral ship shall carry that property to the belligerent, to be by him employed to recruit his strength for the war. If, therefore, it be that neutral ships are neutral territory, the question is not thereby concluded but still remains, for it cannot be contended that it is more than territory or entitled to more than territorial immunities.

But the fiction has never held so much water. The ship is liable, which the State is not, to be visited and searched, and to have captured in her, which the State is not, contraband of war, even of neutral ownership. All practice, therefore, as well as all reason, shows that neutral vessels sailing on the high seas are not a part of a neutral state standing on the firm land, in any sense which entitles them to do that which the firm land cannot do.

So much for the principle. Let us now see what has been laid down as the rule of international law by the great publicists. The oldest

authority on the Laws of Maritime War is the *Consolato del Mare*, a code which was of recognized authority so early as the end of the eleventh century, and which was received and adopted from the Baltic to Constantinople. The rule there laid down is this, "If an armed ship or cruiser meets "with a merchant vessel belonging to an enemy "and carrying a cargo the property of an enemy, "common sense will sufficiently point out what is "to be done, it is therefore unnecessary to lay "down any rules for such a case."

"If the captured vessel is neutral property and "the cargo the property of enemies, the captor "may compel the merchant vessel to carry the "enemy's cargo to a place of safety, where the "prize may be secure from all danger of recapture; "paying to the vessel the whole freight which it "would have earned at her delivering port."*

Grotius, that great and wise Dutchman, who has been called the Father of International Law, and who certainly was the first who reduced it to the form of a Science, wrote in the beginning of the 17th century. He adopted the *Consolato del Mare*, and transcribed the passage relating to this point ;† and although he does not argue the point out, for no pretensions contrary to the law of the *Consolato* had in his times seen raised, yet there can be no doubt how he would have decided upon

* *Consolato del Mare*, cap. 273. Robinson's translation.

† *De Jure Belli ac Pacis.* Book III. 1, 5, and note to § 3.

it, for he leaves it an open point whether a belligerent may not prohibit a neutral from carrying his own property to the belligerent, which is to go much further than the prohibition to carry the property of the belligerent. Albericus Gentilis, the Dutch Voetius,* the English Zouch,† the Swedish Loccenius,‡ all equally accept the principle that enemy's property is enemy's property, wherever found on the high seas. Puffendorff§ refers to Grotius on the question, and like him admits‖ that it may be allowable for a belligerent to prohibit not merely neutral carrying but all neutral trade with the other belligerents. Bynkershoek, a Dutch publicist who wrote at the beginning of the 18th century, and Heineccius, a Prussian, his contemporary, were the first who found such a notion raised as that neutral ships could protect enemy's, and they both contemptuously repudiate and denounce it.¶ "Why do you doubt?" asks the former of the two, and "Nobody doubts," replies the latter.

Thus it appears that from the eleventh to the middle of the eighteenth century there was no

* *De jure militari*, cap. 5, n. 21.

† *De Jud. inter Gentes*, p. 2, s. 8, n. 6.

‡ *De Jure maritimo*, 2, 4, 12.

§ *Droit des Gens*, L. VIII, c. 6, and note.

‖ Barbeyrac, *Law of Nature and of Nations*, L. VIII, c. 6.

¶ Bynkershoek, *Quest. Jur. Pub.* cap. xiv. Heineccius, *de Navibus ob vecturam vetilarum mercium commiss:* cap. 2.

doubt or question as to this matter. Neither was such a claim as that of neutrals to carry enemy's property ever raised till 1752, when it was first advanced by the King of Prussia in a memorial to the Duke of Newcastle, whose answer* drawn up by four publicists, Lord Mansfield, Sir G. Lee, Dr. Paul, and Sir Dudley Ryder, is held by Montesquieu† as an "unanswerable reply," and by Vattel to have thoroughly established the position contended for.‡ The King of Prussia accordingly at once abandoned his contention, and did not carry out the threat which had accompanied it. Vattel and Montesquieu, as we have seen, pronounced against him, and Vattel, facing the whole question, declares that "if we find an enemy's effects on board a neutral ship we seize them by the rights of war."§

Against this array of great names there are to be set on the other side, Hübner, a Dane, who had been employed by his own Government to endeavour to obtain an alteration in the law, and who wrote for that particular purpose, as an advocate would, and Schlegel his disciple, both of whom have been utterly overthrown both as rea-

* *The Duke of Newcastle's Letter to M. Michell, the King of Prussia's Secretary to the Embassy.* London, 1753.

† *Lettre 45 à l'Abbé Guasco.*

‡ *Droit des Gens*, Book II, cap. VII, 84, p. 166, in Chitty's translation.

§ *Droit des Gens*, Book III, cap. vii, 115.

soners and as authorities by Ward,* by Lord Liverpool,† by Lampredi, and later by Manning.‡ But from this time when the novel claim was first raised, there begins a new set of authorities who now the first of all publicists being challenged to examine it, all asserted and justified the old rule. Moser, a Dane,§ Lampredi, and Azuni,|| Italians,¶ Chancellor Kent,** Wheaton,†† Phillimore,‡‡ and Reddie,§§ in their writings, Sir William Scott (Lord Stowell) and the Admiralty courts by their decisions have exhausted the question; and on the other side we find only such men as De Martens and Klüber, De Rayneval and Ortolan (the last with much hesitation) who neither exhaust nor argue it, but merely lay down as an arbitrary rule one contrary to

* *Treatise of the relative rights and duties of belligerents and neutral powers.*

† *Discourse on the conduct of Great Britain*, 1759.

‡ *Commentaries on the Laws of Nations*, pp. 200, 233, 235.

§ Moser, *Versuch* B. XX, cap. ii, pp. 33, 34.

|| *Droit Maritime de l'Europe*, cap. iii.

¶ *Du commerce des Neutres.*—Lampredi's adhesion to and assertion of the right as in conformity with the law of nations is the more remarkable because he avows that his great desire is to see the principle of "free ships free goods" established. His treatise, is very valuable as being a collection and summary of all the arguments used by preceding publicists—the same remarks apply to Azuni.

** Kent's *Commentaries*, I, 126, 131.

†† *Elements of International Law*, 162, 183.

‡‡ *Commentaries on International Law*, Vol. II, § 9.

§§ *Researches, historical and critical, in Maritime International Law*, Vol. I, p. 463.

all reason precedent and authority. There is indeed one writer who in very recent times (1868) has undertaken to argue that the "primitive law," or in other words the law of Nature and of Justice which is the law of nations, either does or should forbid the capture of enemy's property in neutral vessels. This writer is M. Hautefeuille, and it has been reserved to him to show that the principle of "free ships make free goods" for which he contends, is one which was both originally invented and is now advocated with the express and only purpose of putting an end to the maritime power of Great Britain. His work is a series of indecent and frenzied attacks upon that country, and its avowed purpose is to bring about a new and permanent armed neutrality with the object equally avowed of diminishing her power by enforcing the principle for which he contends.* There could not possibly be a better proof that M. Hautefeuille is aware of the vital importance to a maritime country of this

* "Ses forces mêmes," he says, speaking of England, "quelques considérables qu'elles soient, viennent si briser contre les droits des peuples neutres si ces peuples savent se réunir pour le salut commun." And he admits also that the mere retention of the right to seize enemies' goods is sufficient to prevent their transport. "Le commerce," he says, "vit de sécurité, le commerce de transport comme tous les autres ne peut exister sans cette garantie. Du moment où la propriété ennemie n'est pas en sûreté à bord des navires neutres, navires qui ne doivent pas même se défendre contre le belligérant, le commerce de transport est frappé de mort."—*Des droits et des devoirs des Nations neutres.*

question, nor a better proof that those who advocate his views do, wittingly or not, advocate the extinction of maritime power. His object being so impudently avowed his arguments might be disregarded as those of a person rendered incapable by passion of treating such a subject. Nevertheless, as he is the latest exponent of the new doctrine it is worth while to examine his arguments. They are as follows:—

I. That a neutral merchant ship on the high seas is neutral territory, and therefore a belligerent has no jurisdiction over it, and consequently no power of capturing goods in it.* II. That the aid and succour given by a neutral to a belligerent in carrying his goods, is only indirect, and therefore is entitled to immunity.† III. That the sea being

* Le navire est une parcelle du territoire de la nation dont il porte le pavillon; il conserve cette qualité partout où il se trouve; à la pleine mer, sur cette route commune à tous les peuples, mais indépendante des lois de tous les peuples, non-seulement il conserve cette qualité, mais encore il la communique à la parcelle de l'Océan sur laquelle il flotte. Le navire acquiert à son pays, par une sorte de droit d'occupation, la souveraineté de cet étroit espace; c'est l'appropriation momentanée d'un lieu libre.—*Des Droits et des Devoirs*, cap. ii., p. 291.

† Je sais que le belligérant a le droit de nuire à son ennemi par tous les moyens possibles, par tous les moyens directs; ce droit, il le tient de la loi divine; mais cette même loi lui défend l'emploi de tous moyens indirects.

Le transport des propriétés ennemies n'a et ne peut avoir aucune influence sur le sort des expéditions militaires, car il ne s'agit ici ni de contrebande de guerre, ni de commerce avec un

free to all and the right to trade being an inherent right in every nation, the neutral retains this right in war as in peace, and must not have it diminished."* IV. That the Conventional Law of Nations by repeated and common consent prohibits the capture of enemy's goods in neutral ships.†

lieu bloqué, mais seulement des objets déclarés innocents par la loi internationale.

Or, de même que le neutre souffre des conséquences indirects de la guerre, par suite des devoirs qu'elle lui impose, et qu'il ne peut pas s'en plaindre, lui qui est étranger au conflit; de même le belligérant doit supporter, sans se plaindre, les conséquences indirectes de la neutralité et de l'exécution de ses propres devoirs.—*Des Droits et des Devoirs*, Vol. ii., pp. 291, 292, 371, 372, 373.

* Le droit du neutre, c'est l'indépendance complète, c'est de ne devoir obéissance et soumission à nul autre peuple, c'est la liberté de faire tout ce qu'il veut, et par conséquent de commercer selon sa volonté ou son caprice, avec l'un ou l'autre des belligérants. C'est là son droit essentiel, le droit constitutif de sa nationalité, le droit sans lequel le neutre ne peut plus avoir la prétention de former un peuple.—*Des Droits et des Devoirs*, Vol. ii., p. 370.

† Le droit secondaire n'a pas varié sur cette grave question depuis deux siècles et demi, c'est-à-dire depuis que l'Europe a commencé à sortir des ténèbres de la barbarie, depuis que le commerce et la navigation, prenant des développements importants, sont devenus des éléments indispensables de grandeur et de la prospérité des États; en un mot, depuis le moment où les divers peuples ont eu intérêt à rechercher et à soutenir les droits que Dieu lui-même leur a donnés sur l'Océan.

A cette longue série d'actes publics et solennels dans lesquels ont figuré successivement, pendant plus de deux siècles, toutes les puissances maritimes, on ne peut opposer, dans le sens contraire, qu'un petit nombre de conventions, la plupart conclues dans des circonstances qui, les rendant inégales, les

There is no difficulty in destroying these propositions. I. The neutral ship is not neutral territory in the sense here claimed for it. It is no doubt treated as such by a fiction necessary for the purpose of carrying upon it the jurisdiction of the municipal laws of the State to which it belongs; but as regards the international duties of that State, it is submitted to conditions which already prove that it is not "a part of its territory." It is prohibited, for example, from having on board arms and ammunitions of war destined to a belligerent, which is not the case with the territory; it is prohibited from entering duly blockaded ports; and it is liable to be visited for the verification of its papers and nationality, and of the innocent nature of its cargo. No such authority as is exercised over the neutral vessel can be exercised over neutral territory. It is clear, therefore, that the merchant ship on the high seas being subjected to treatment and laid under conditions quite inadmissible in territory ashore cannot claim to be such. But if it be, then I turn M. Hautefeuille's argument against himself.

His argument is, that the neutral territory afloat is entitled to all the respect and all the immunities of the neutral territory ashore. If

frappent de nullité, ou du moins leur enlèvent toute espèce d'autorité, et certainement s'opposent à ce qu'elles puissent fonder une jurisprudence internationale.—*Des Droits et des Devoirs*, Vol. ii., pp. 308 and 299.

this were true it would follow that nothing more can be claimed for the shore than can be claimed for the ship. And it would follow that since the ship is liable to search for, and to the confiscation of contraband of war, the shore must be equally liable, and that the belligerent has the right to enter a neutral State in order to seize by force of arms if necessary all articles contraband of war that he may there discover. Either this is true, or it is not true that the neutral ship is neutral territory, entitled to the same immunity as the soil of the State to which it belongs.

As to commerce by neutral vessels in contraband of war M. Hautefeuille declares that it is properly prohibited not as contraband, but "because the "fact of selling to combatants objects immediately "serviceable in the conflict is taking part in the "hostilities and is a violation of one of the duties of "neutrality."* If this be true, and if it be true that the neutral vessel is neutral territory in the complete sense, it follows that the belligerent has a right to prevent the taking such part in hostilities, and such violation of neutrality as well ashore, as

* Si la contrebande de guerre est un commerce prohibé, ce n'est pas parce que c'est un commerce, mais bien parce que le fait de vendre à des combattants les objets immédiatement propres au combat, est une immixtion aux hostilités, une violation de l'un des devoirs de la neutralité, qui suffirait pour faire considérer la nation qui l'a commise comme ennemie, et pour la traiter comme telle.—*Des Droits et des Devoirs*, Vol. ii., p. 281.

at sea, and therewith has also the right of visiting neutral territory ashore as well as afloat. Those who will not stand to this must abandon the fiction, for it is nothing else, that a merchant vessel on the high seas is neutral territory, and with it the argument based upon it, that as such it is entitled to protect belligerent commerce from capture.

II.—The argument that the aid and succour given to a belligerent by carrying his commerce is only "indirect," and is therefore not a violation of neutrality, if it is good for anything is good to show that commerce in contraband of war is also no violation of neutrality. For that also is but an indirect assistance. Gunpowder, shot and shell and cannons are in themselves of no avail until they are in the hands of those who are to dispose and to use them, and are by them so used as to produce their effect; and the selling and carrying of them to a belligerent does no direct but only an indirect injury to the other belligerent. And it is easy to conceive cases in which the assistance afforded to a belligerent by carrying his goods and by procuring for him supplies of money and of merchandize in exchange may be of more effect in enabling him to continue the war than even a supply of arms and ammunition. M. Hautefeuille indeed has adroitly shrunk from the task of defining what is "direct," and what "indirect" assistance to a belligerent; but the definition and the distinction are broadly laid down

in the Law of Nations. For a neutral Power to despatch or permit to be despatched from its shores an armed expedition against one of the belligerents is to take a direct part in the war, and this the neutral nation is bound to prevent of its own proper action. But to despatch supplies of arms and ammunition not accompanied by those who are to use them, or to run a blockade, is to give indirect assistance to the belligerent—and these acts the neutral Power is not bound to prevent, but it is bound to leave those of its subjects who engage in them to be dealt with by the belligerent against whom they are directed. Here we see two kinds of "assistance," one which the neutral Power may and the other which it may not lawfully permit its subjects to give. The belligerent injured cannot however be held and never has been held bound to submit to either kind of participation in the war. In the case of direct participation, he calls upon the neutral Power to do its duty of prevention; in the case of indirect participation he exercises his own right of prevention by capture and of punishment by confiscation. It is clear, therefore, that the fact of participation in a war by the neutral being 'indirect' does not render it lawful. M. Hautefeuille is fond of drawing his arguments from a consideration of man in his primitive state. Let us suppose then two men armed with bows and arrows fighting in coracles on the sea near the

shore. M. Hautefeuille allows that for a third man in a third coracle to came off with a new bow or a single arrow is a violation of neutrality; but he contends that if the third man instead of bringing a bow brings food and restoratives to the combatant who exhausted by the want of these, and unable to obtain them himself, is on the point of surrender—this he declares is no violation of neutrality, but only legitimate trade to be held sacred. But let us try this doctrine of the lawfulness of indirect assistance a little further. Gold is in itself of no direct use in warlike operations. To supply it does not "bear upon the forces immediately destined to combat and exclusively "proper to war." It is, so far as war is concerned, a mere representative of other things and a means of acquiring them. To afford assistance therefore by a gift of gold is to afford assistance of a thoroughly indirect kind. Yet, if M. Hautefueille's argument proves anything, it proves that a neutral may subsidise a belligerent for warlike purposes to any extent without the slightest violation of neutrality. Which is absurd.

III.—As to the right of a neutral to trade in time of war, it is clear that he does not and cannot enjoy it to the same full extent as if there were no war. As a neutral he gains no new rights by the war, but on the contrary is burdened with new duties. He may no longer trade with either belligerent in contraband of war; he may no longer

trade at all with blockaded ports. It is clear therefore that he no longer has "la liberté de " faire tout ce qu'il veut et par conséquent de com- " mercer selon sa volonté ou son caprice avec " l'un ou l'autre des belligérants." He had it fully and completely in time of peace ; but he has it in time of war subject to the new duty under which he falls of absolute abstention from the conflict. He had the right to trade in arms across the seas with both belligerents ; he has now the duty to abstain from thus trading with either; he had the right to trade to all ports; he now has the duty to abstain from those which are blockaded. He had the right to carry the merchandize of both belligerents; he now has the duty to abstain from carrying that of either. In no one of the three cases is there any invasion of his ancient right; in all there is the enforcement of the same duty of abstention from all that may affect the issue of the struggle.

IV. M. Hautefeuille seeks to prove that the conventional law of nations prohibits the capture of enemy's goods in neutral vessels, by the simple method of declaring null and void all the numerous conventions which have ever been made of a contrary effect. Thus he declares the Convention of 1801, " entaché d'une nullité radicale " as regards Sweden, Denmark and Russia; and that the treaty of 1795 between England and America is equally void, because " unequal." Passionate and biassed

as he is, however, he is nevertheless forced to record many important conventions in which the ancient and original principle is embodied. But, in fact, the very existence of conventions stipulating that, as between two given nations, free ships shall make free goods, proves that by the common law of nations that is not the case. For a consideration, a right may be waived for the advantage of a particular State, but that does not affect it with regard to other States with whom no such waiver has been made. And whatever Conventions may exist or may ever have existed, they can only prove that it has been held advisable to waive this right in particular cases; but they can never prove that it has ceased to exist.

On a review of the whole matter, then I submit, it is abundantly made clear that the Law of Nations, as declared by the unanimous voice of its most revered expounders, denies and repudiates the claim set up by neutrals to withdraw from capture enemy's property at sea by the mere display of their bunting. It is true that upon many different occasions, and between many different countries particular treaties have been made which allow the claim as between the parties; but these treaties do not make the law; on the contrary, they modify it for a particular reason in a particular case; and the very fact of their existence (for otherwise they would not have been necessary) proves that the unmodified law is such as it has been stated

to be, namely that any State when at war has the right to capture its enemy's property at sea, of whatever nature it be, and in whatever vessels it is found.

The exercise of this right has always been found to give so tremendous a power over its enemy to any nation possessed of the naval supremacy essential to its full exercise, that those nations whose power is on the land alone have always had for an object, not indeed to deny the right—for that would have involved the denial of the right of capture on land—but so to limit it as to render it of no avail. In the argument they had been, as to this day they are, completely worsted; but if Reason was known to be thoroughly against them an occasion arose when, as was thought, Force was with them, and would enable them to impose by arms the novel doctrines which they had failed to establish by argument. In 1780 this attempt was first openly made, with the avowed object of acting against England, then at war with France, Spain and the American Colonies. The Armed Neutrality first solemnly asserted principles having this effect. It was declared that although enemy's property in an enemy's vessel shonld be liable to capture, yet that enemy's property in a neutral vessel should no longer be so liable unless it were contraband of war —that is of such a nature as to be adapted for direct and immediate employment in warlike operations, such as arms or ammunition.

The effect of this novel principle was, that while it conceded the right of capture, it at the same time destroyed it. For any nation at war with another its superior at sea had but to ship its property in neutral vessels in order to be enabled to carry on with impunity that trade which the right of capture would otherwise destroy, and to retain those sources of revenue which would otherwise be stopped. The injury in short capable of being inflicted by capture at sea would thus have been reduced to a point of insignificance, and the power of making effectual war at sea would consequently have vanished. The intention was too manifest to escape any observer, the invasion of right too flagrant to be met with aught but repudiation and resistance. And repudiation and resistance were made with equal effect. Sweden, Denmark, Prussia, Germany, Holland, France, Spain, Portugal, Naples, and the United States all joined with Russia in an armed support of the doctrine; but England stood firm against all, and on the French revolutionary war supervening Russia herself led the way back to the old rule in a treaty with England which solemnly reasserted the original Law.

In 1800 a seeond armed neutrality was formed with the same object as its predecessor, but the next year the attempt was again abandoned, and the original Law again subscribed to by Russia its originator in the Treaty of June 1801.

On the pretensions put forward by the Armed

Neutrality no better comment can be given than the despatch in which (in 1798) the Government of the United States vindicated the right of England to take French property out of American vessels, the exercise of which right France had requested America to disallow. "The rights of England," said they, "being neither diminished nor increased "by compact, remained precisely in their natural "state, which is to seize enemy's property wher- "ever found, and this is the received and allowed "practice of all nations where no treaty has inter- "vened. The desire of establishing universally "the principle that neutral bottoms shall make "neutral goods is perhaps felt by no nation on "earth more strongly than by the United States. "Perhaps no nation is more deeply interested in its "establishment; but the wish to establish a prin- "ciple is essentially different from a determination "that it is already established. The interests of "the United States could not fail to produce the "wish; their duty forbids them them to indulge it "when decided on as mere right."

America has acted upon these principles ever since. She has even refused to join in the renewed declaration of the principles of the Armed Neutrality proposed to her so late as 1856. And yet America has been claimed as the Power whose resistance to those very principles which she asserts necessitated that very Declaration which she rejects.

Much has been said, though little has been proved,

of the abuses to which the capture of property leads. It is alleged that the practice of this kind of warfare renders naval officers and men greedy of gain, and that it induces them to neglect enterprises of mere fighting in order to engage in those which promise prize-money. If this were so it would be in every way a gain. It would be a gain to humanity that the operations of war should be directed from men's bodies to their goods; it would be a gain to the belligerent which would at once enrich itself and distress its enemy; and it would be a gain to the officers and seamen who would thus be rewarded for their toils by the enemy himself instead of becoming chargeable for increased pay and pension on their own countrymen.

But it is not true that the pursuit of prize has ever been sufficiently powerful a motive to draw officers and men away from duties in which hard knocks alone were to be given and received. It is so little true that all the great naval actions that have been fought have been fought by sailors trained and practised to their trade in the pursuit of prize.* For indeed this is the very pursuit that makes sailors; this was the very pursuit which during the wars of the last and the beginning of the present

* Between November, 1802, and November, 1811, nine years in all, Sir William Parker captured, as captain of the "Amazon," no less than sixty vessels, which produced to him as his own personal share of prize-money the sum of £35,211. 11*s* 3*d*.—*Life of Sir W. Parker. Appendix.*

century enabled English Commanders to make excellent seamen out of the sweepings of gaols and the rakings of the shore brought on board by the press-gang in a frame of mind which would rather have induced them to fight against than for their country. And more than this, it is the one only inducement that will suffice to draw sailors into a navy in time of war, that will keep them in it, or that will make them fight with any heart or spirit. Even ashore it is found necessary to offer to the soldier the allurements of booty as well as the prospect of increased pay and promotion; how much more then is it necessary to allow prize to the sailor, whose life is always in his hand, and who has to contend with the elements as well as to do battle with the enemy. Yet without the capture of property there can be no prize, and without prize there can hardly be any sailors, and certainly there cannot be sailors of the stamp of those who fought under Nelson, Howe, Rodney, and Duncan.*

* "I have seen it openly proclaimed that seamen will fight "for fighting's sake, and without expectation of reward. If "the propounders of such an opinion were to ask themselves the "question whether they engage in professional or commercial "pursuits from mere patriotism, and without hope of further "remuneration, then their reply would show them the fallacy "of ascribing to seamen a want of those motives which impel "all men to adventure and exertion. The result of my now "experience is that seamen fight from two leading motives:— "1st, Prize-money. 2nd, From a well-grounded belief in their "own disciplinary experience, which refuses to be beaten, and

PROPOSITION III.—THAT EVERY STATE HAS A RIGHT BY THE LAW OF NATIONS TO ARM AND COMMISSION PRIVATE VESSELS AS AN AUXILIARY TO ITS NAVAL FORCE, AND THAT THE USE OF THIS AUXILIARY FORCE IS ESSENTIAL TO THE FULL DEVELOPMENT OF THE WHOLE FIGHTING-POWER OF THE COUNTRY.

That every State when at war has a right to claim the aid of all its citizens in the prosecution of the war is a principle so clear that it has never been contested. It has indeed been carried so far that the nations of the Continent claim and exercise the right, not only when actually at war but when at peace with all mankind, since by the system of universal military service, which is now in many countries established, they enrol all their citizens in peace, and during peace train and prepare them all for war. Since then the State thus compels its citizens to give aid in war, there can be no doubt that it has also the right to accept their aid when voluntarily offered. This is the case with Privateers, which are vessels provided, manned, and armed by private individuals, furnished with a commission by the Sovereign, and sent forth to attack the enemy in his commerce.

" is not satisfied with less than conquest. Take away the first " motive and we may find difficulty on an emergency in " getting men to accomplish the second."—*Lord Dundonald's Autobiography*, vol. 1., p. 54.

Though the right to send forth Privateers has never been contested, yet the propriety of exercising it has nevertheless been questioned, on several grounds, which it is proposed here to examine. In order to make the matter clear it will be as well to state here more exactly what a Privateer is, and under what conditions alone it can act. This is the more necessary, because either from ignorance or from insincerity, the most erroneous and absurd notions have been promulgated on this point, by men whose names and position should have been a guaranty that their speech was honest and accurate.

A Privateer (or corsair, as it is sometimes called) is then, a vessel armed and equipped by a private person or persons, to the captain of which the Sovereign of a State at war upon application of the owner, has issued a commission or letter of marque and reprisals empowering him to levy war upon the enemy by capturing his property. The essence and sole origin of the right thus to cruise and to seize enemy's property lies in this commission; without it the Privateer would be a Pirate.

With it the Privateer becomes a vessel of the State and a ship of war,* for all the purposes for which it is commissioned as long as the war lasts.

* "A ship furnished with a letter of marque is manifestly "a ship of war, and is not otherwise to be considered because "she acts also in a commercial capacity. The mercantile cha- "racter being superadded, does not predominate over or take

As such privateers are, equally with vessels of the State navy, subject to all regulations which the State may lay down for their conduct, and in order to secure the observance of these regulations it has always been customary to cause them to give security by depositing a sum of money before sailing on their cruise, that they will duly observe them.*

In the second place it is to be observed that the Privateer, like the State ship, has only the right to carry the property he captures into port for adjudication, that no Privateer can touch a rope-yarn on board an enemy's vessel, or appropriate an ounce of merchandise except after final adjudication as lawful prize in the High Court of Admiralty,† and that if the master or crew commit any acts of outrage, or in excess of their authority, even in the performance of legitimate acts, both they and the owners are liable to the full value of the property injured or destroyed.‡

" away the other (Lord Stowell, in the *Fanny*, 1 Dodson, 448). " Privateers are private property in one sense, but they have at " the same time a public character impressed on them by their " employment; though they are private property they are still " private property employed in the public service." On which ground it was decided by Lord Stowell that a Privateer was liable to seizure under a capitulation which stipulated that " all private property should be respected." 1 Edwards, 271.

* *See* Act of Congress of 1812, sec. 3; *see* also the last Prize Act, 55 Geo. III., cap. 160, and Appendix A and B.

† *See* 55 Geo. III. cap. 160.

‡ *See* the case of the *Amiable Nancy*, 1 Paine iii.

That there may remain no doubt as to the character and the obligations of the Privateer, a copy of the form of the commission and of the regulations he was bound to observe as they were last issued in 1812 and 1815, are printed in Appendices A, B, C, and D.

Thus it will be seen—1. That a Privateer can only act by virtue of a commission regularly issued by the State. 2. That in thus acting he is bound to adhere to the regulations imposed by the State. 3. That he gives heavy security for their observance. 4. That all he can do is to bring the property he seizes into port, there to be adjudicated upon. 5. That unless the property be declared lawful prize, he acquires no claim to it. 6. That if he has made seizure of property without probable cause he is liable to pay costs and damages to the owners.

Nevertheless, in the face of all this, there have been found men ready to assert that the Privateer, who acts by public authority under the regulation of law, is not to be distinguished from the Pirate who acts without any authority, subject to no regulation and in defiance of the law.

Thus Lord Clarendon, then Foreign Secretary, said at the Conference of Paris,* "la course n'est "autre chose qu'une piraterie organisée et légale" —as though piracy ever *could* be legal—but writing a despatch ten years later, in the name of the British

* *See* 22nd Proposal of the Conferences of Paris, 1856: *State Papers*, Vol. 46, p. 128.

Government, he was forced to retract this monstrous proposition, and laid it down that "the character "of a Privateer is determined by her commission, "and if that is issued by the Sovereign Power of "the State, whose colours she bears, neither her "captain nor her crew can be deemed to be "pirates."*

Mr. John Bright, again, who, as a member of the Privy Council and formerly a Minister of State, should speak with some knowledge, said at a public meeting, "In the reign of Queen Elizabeth "more than half of the shipowners, and especially "those on the southern coasts, were engaged in "piracy—*their ships were either pirates or corsairs*, "*and I do not know the difference between them.*"† There may perhaps one day be found a man hardy enough to tell a meeting of sane Englishmen that he does not know the difference between a burglar and a sheriff's officer, for there is precisely the same difference between a Pirate and a Corsair; but it would be strange if even he were rewarded as Mr. Bright was with applause proceeding from ignorance as great as, though more excusable than his own. Again, in the debate in the House of Commons on the 13th April, 1875, Mr. Bourke, the Under-Secretary for Foreign Affairs, said, "Privateers "can do whatever they choose, and are bound by

* Despatch to the Spanish Government, 6th January, 1866.

† *See Times* report of Mr. Bright's speech, 26th June, 1875.

" no rules whatever except those which they make " themselves."

When such is the notion held of Privateers and privateering by men in authority it is the less surprising that a prejudice should exist in the minds of men at large against the practice of accepting volunteer aid at sea. It is remarkable, indeed, since there is no such prejudice against the acceptance of volunteers on land, and since there is no kind of comparison between the increase of strength which a maritime country must receive from volunteer aid on the sea where her power is, as compared with that she would gain from volunteers on shore where her power is not.

The objections made to privateers do not as has already been said (for they cannot)—touch the *right* to accept their services—they only deal with the propriety of the policy of exercising the right. It is said and repeated that privateering is a "barbarous" method of making war, that it is a "relic of barbarism," that "the motive of " privateers is plunder," that "they are one of " the greatest scourges of war," that privateering is "opposed to civilization and humanity," and that to abandon it tends to "mitigate the horrors " of war."

Now it is simply necessary to say in reply to all this that Privateers act against property alone, that the one sole object with which they set out is to take property, and that they neither propose to

take nor are permitted to take life, except in case of resistance to their taking of property. Unless, then, it is less barbarous and more civilized to take life than it is to take property, unless it be less humane to seize a cargo than to blow a ship's crew into the air; unless it be more horrible to capture inanimate merchandise than to dismember and destroy animate men; unless this be true, it must follow that the Privateer is far more civilized and humane in his method of injuring the enemy than any can be who go out only to "sink, burn, and "destroy." The very fact that "his motive is "plunder" (for which read "Prize") is his greatest justification, and the greatest proof that his method of warfare is the most humane; while the fact that he is one of the "greatest scourges of "war" is the greatest proof that nations can be scourged by attacks on the property more heavily than by attacks on the lives of their subjects.

The case for Privateers has indeed been adequately stated by President Jefferson:—"What "is war? It is simply a contest between nations "of trying which can do the other most harm. "Who carries on the war? Armies are formed "and navies are manned by individuals. How is "a battle gained? By the death of individuals. "What produces peace? The distress of in-"dividuals. What difference to the sufferer is "it that his property is taken by a national or a "private armed vessel? Did our merchants who

" have lost 917 vessels by British capture feel any " gratification that most of them were taken by " his Majesty's men-of-war? Were the spoils less " rigidly exacted by a seventy-four gun-ship, than " by a privateer of four guns, and were not all " equally condemned? War, whether on land " or sea, is constituted of acts of violence on " the persons and property of individuals; and " excess of violence is the grand cause that brings " about a peace—one man fights for wages paid " him by the Government, or a patriotic zeal " for the defence of his country, another duly " authorized, giving the proper pledges for his good " conduct, undertakes to pay himself at the ex- " pense of the foe, and serve his country as effectu- " ally as the former—and Government drawing all " its supplies from the people, is in reality as " much affected by the losses of the one as the " other, the efficacy of its measures depending " upon the energies of the whole. By licensing " private armed vessels the whole naval force of " the nation is truly brought to bear on the foe, " and while the contest lasts that it may have the " speedier termination let every individual con- " tribute his mite in the best way he can—to " distress and harass the enemy and compel him to " peace."* That the use of the auxiliary force

* Article by Mr. Jefferson, 4th July, 1812. *See History of the American Privateers.* New York, and Sampson Low, London, 1857.

furnished by privateers is essential to the development of the whole fighting force of the country is proved as soon as it is admitted that there is any force in privateers at all.

There neither is nor ever has been any doubt that privateers do furnish a most efficient means of action against commerce. It is that indeed which explains the anxiety of the non-maritime nations to cause this terrible arm to be laid aside, and which equally explains the determination of such a maritime power as the United States to retain it.

PROPOSITION IV.—THAT THE EXERCISE OF THE RIGHT OF SEIZURE AND CONFISCATION, WHETHER BY STATE VESSELS, OR COMMISSIONED PRIVATE VESSELS, WHILE IT IS THE MOST EFFECTUAL, IS THE MILDEST AND LEAST CRUEL OF ALL METHODS OF MAKING WAR.

That to capture property is a more effectual means of injuring the enemy than to destroy life, has already been shown as fully as it is necessary to show what is self-evident. It remains here to consider whether this method of warfare is, in its nature, worse or better, less or more humane than any of the other methods known, practised and admitted. There are those who declare that to capture property is more barbarous and less honourable than to cut throats; they assert that it is more degrading to subjects of a warring State to

be induced by the motives of personal profit to capture prize, than to be induced by the motive of personal advancement to shed blood. They do not propose or advise that the hope of extra pay and promotion shall be withdrawn from among the inducements to the officers and men of the army and navy; but they say that the inducement of prize-money is in some way more immoral and less honourable. And what is remarkable is that the same persons who hold this language, entirely change their tone, when they come to speak of the merchant, in whose interest, short-sightedly viewed and ill understood, they raise their contention. It is not lawful, they assert, for any soldier or sailor or any volunteer to be moved by the hope of gain; even though it should be a gain in which his country participates; but it is lawful for the merchant to be moved by that hope, nay to be moved by that alone, and even if its realization be fraught with disaster to his country. The soldier, the sailor and the volunteer must fight, they say, without any consideration of private gain; but the merchant must trade upon this consideration alone, nay more than that, he has a right to claim any sacrifice on the part of his country which will enable him to continue his trade at all times. It is, nevertheless, manifest that if it is right to reward one who fights for the State out of taxes taken from his countrymen, it cannot be wrong to reward another out of prizes taken from his

countrymen's enemies, and that it is not less honourable to receive prize-money for destroying the enemy's resources in goods, than it is to receive a title or a riband for destroying his resources in men. Nay, since the first object is to weaken the foe, and thus to cause the war to be brought successfully to an end, and since, therefore, he is best entitled to reward by his country who most powerfully contributes to this end, the greatest rewards and the highest honours should be reserved, not for those who kill most men, and thereby inflict a comparatively slight injury on the enemy, but rather for those who capture property, and thereby at once inflict a great injury upon him, and also add to the resources of their own country.

It has, however, been freely alleged that this method of making war is more barbarous and brutal than all others. Those others be it remembered consist in the destruction of human life, while this is solely concerned with property ; and this alone is a sufficient answer to such an argument. But from the declamatory denunciation of the capture of property at sea, it is apparent that the methods by which alone that capture can lawfully be effected, are either unknown or are intentionally concealed. For which reason it seems expedient here to set forth what the procedure is, whether for State vessels or Privateers. The cruiser if he comes across a vessel he suspects to

have enemy's goods on board, requests her to lay to, and sends a boat on board with an officer whose duty it is to examine the vessel's papers. If it appears from these that the vessel itself is the property of the enemy, or that there is enemy's property in the cargo, the captain of the cruiser on his responsibility and at his risk, puts a prize crew on board, and takes the vessel into port. He may not break bulk, nor touch or embezzle an article on board the vessel under pain of forfeiting his whole share in the prize, together with treble the value of the articles embezzled.* He may not injure a person on board, he may not even ransom the prize and set it at liberty, but must bring it into port for adjudication.† Once there, the vessel is delivered over to the Admiralty Court, which proceeds to decide whether the capture is good prize or not, and if not, the captor is liable, and is condemned to pay costs and adequate damages for his interference with the vessel.‡ There is in short no warlike act which is so fenced about with conditions and with securities as this, none in which the voice

* 55 Geo. III. cap. 160, s. 56. † *Idem*, s. 12.

‡ *See* Lord Stowell's letter of 10th Sept. 1794, as to procedure, in Robinson's *Admiralty Reports*, American edition. "Agreeing to share prize-money (in 1799) involved sharing "the bad as well as the good fortune of the captors. Enemy's "property in neutral bottoms could not always be proved, "and where proof failed the captors were liable to demurrage "and very heavy costs."—*The Life of Sir W. Parker, Admiral of the Fleet.* London, 1876, p. 127.

of the dispassionate judge is heard as it is in this, none in which injury to the innocent is so guarded against, none in which the excesses of the strong and the violent are so precluded. In other operations of warfare, such as battles ashore or on the seas, the whole black array of human passions are let loose and encouraged to do their worst; in this they are restrained by the most rigid rules, and forced to submit themselves to the judgment and approval of a calm and orderly tribunal, and if any man has wrought violence or inflicted injury he has to answer it.

The seizure of property on land in time of war is subject to no such rules. Any military commander who chooses to declare it necessary, may on land seize any property he may please to designate, without any form of trial or judgment whatever. And though it is true that he is answerable for his acts, *after* they have been done, to his military superiors, that is a very different thing from being, as the naval captor is, answerable *before* the act is done, to an independent court. It is clear then, that this is of all methods of warfare the least cruel and the least liable to abuse. Moreover it is the only method by which any action can be brought to bear at sea upon the enemy's resources; on land a belligerent may capture territory, and thereby acquiring the absolute dominion over it, may dispose as he pleases of the inhabitants and of their property.

At sea he cannot capture territory, but the right to capture property is only therefore the more clear.

Either the state of warfare gives the right to capture property at sea, or it gives none to capture both territory and property on land. From this dilemma there is no escape, and those who maintain that property at sea should be exempted from the incidents of the war, must extend the same principle to property ashore, and must declare not only against the requisition of food, forage, houses, horses, and other property required by armies, and always taken by them when required, if found, but also against the invasion of territory, the bombardment or siege of towns, the levying of contributions, and generally against any interference whatever with trade and property. In other words, they must denounce war altogether; but at any rate those who recognize that war, with its incidents, is sometimes indispensable on land, must recognize that it is sometimes necessary with its incidents at sea.

There seems to be, however, in some minds so great a desire to limit to the firm land all the operations and incidents of warfare, that they do not hesitate to declare not merely against the right of capture of enemy's goods, but even against the right of search upon which alone all knowledge of a vessel, of her nationality and character must be based. They declare that the act of boarding a merchant vessel, and of examining its papers, and

if cause appear, its crew and cargo, is an infraction of the sovereignty, and a violation of the territory of the nation to which the vessel belongs, and a writer on the laws of nations* has even been found to lend the authority of his name to a pretension condemned by all other publicists without exception. Nevertheless the right of visitation and search is assuredly one of the mildest and the least susceptible of abuse that can be exercised. Its object is to verify the nationality and the neutrality of the vessel visited, and to establish the innocent nature of its voyage. The exercise of this right is a necessary consequence and corollary of any other belligerent right whatever. On land the limits of territory are known and apparent, and its character is established by its situation ; but this is not the case with a vessel on the high seas. She may hoist false colours, or she may have false papers, practices which indeed have always been common in all wars. The belligerent man-of-war therefore has the right to assure himself that the vessel he meets is truly a neutral, and that her cargo is of an innocent nature, having an innocent destination. The method of assurance is settled to the merest detail by the law and the practice of nations. In the first place the man-of-war hoists her colours and fires the "affirming gun," which is equivalent to a declaration on honour that the colours are truly those of her sovereign. Thereupon the

* De Rayneval, *De la Liberté des Mers*, t. 1, cap. xvi.

merchant vessel in view of which the colours are hoisted and thus affirmed, is bound in turn to proclaim her nationality by displaying the flag under which she navigates. This may be, and may be deemed sufficient—but if not, the man-of-war lowers a boat with an armed crew, and sends it away under the command of an officer, who, on boarding the meachantman may be accompanied at most by two of his men, and who forthwith proceeds to examine the ship's papers. If it should clearly appear from these that the vessel and cargo are *bonâ fide* neutral property, and that there is on board no contraband of war destined for an enemy's port—or if only it should not appear that there is any good cause to suspect the contrary—then the merchantman is allowed to proceed. If on the other hand it would seem that the vessel is enemy's property, or that, being neutral, she is engaged in conveying contraband of war, or in traffic of an otherwise unlawful nature, the captain of the man-of-war may seize her—always at his own risk, and with the certainty, if he fails to prove his case, of having to pay costs and damages.

It would seem to require little argument to show that the right of visitation and search is one which can by no means be abandoned. By it alone can the flag be verified, by it alone can the carrying to the enemy of contraband of war be prevented, by it alone can any safeguard be afforded against the many frauds and deceptions

which the very situation invites. The right is undoubted, the exercise of it is necessarily mild and moderate in character, and it amounts to nothing more in the world than affording an opportunity of proving the alleged character. It may be odious to those who wish to evade the duties of neutrality; but to the honest neutral it will hardly be inconvenient.*

It has also been often declared that the visit, seizure, and despatch to port for judgment of unarmed merchantmen by armed vessels of war or privateers was, when it was practised, accompanied by many grievous abuses; that Privateers especially were occasionally guilty of great barbarities and of acts of lawless violence towards the crews captured, and that they habitually destroyed or altered the papers, embezzled the cargo of, and fraudently gave an inimical colour and character to all vessels that fell into their hands.

Upon this it is to be remarked that the assertion thus made is entirely unsupported by proof, and that, on the contrary, the records of the Admiralty Courts show that, as a rule, the seizure and bringing in were effected regularly and without violence — generally, indeed, without any resistance—whether by king's ships or by privateers.† The same records also show that it was extremely

* *See* Lord Stowell's Judgment on the *Maria* (Robinson, 340).

† *See* Robinson's *Admiralty Reports, passim.*

difficult to conceal any irregularity which it was the interest of the captured to disclose, and that wherever misconduct was shown, punishment promptly followed. And now, even if it were true that the capture of property were always accompanied by abuses, that would indeed be a good reason for devising methods to suppress those abuses, but it neither would nor can furnish ground for attacking the right on which those abuses have been engrafted. And here again, that which has already been said must be repeated — that the capture and making prize of property at sea is the one operation of warfare which is subject to calm, unimpassioned judicial decision before the act itself is completed; and that, therefore, if it be liable to abuse, it is at any rate of all acts of warfare that in which the abuse is most certain to be detected, and due reparation most certain to be made.

PART II.

THE PRESENT POSITION OF GREAT BRITAIN IN RELATION TO MARITIME WARFARE.

The Declaration of Paris.

Thus far I have treated the questions discussed in this work upon general principles applicable equally to all nations having any maritime power capable of being used in time of war against an enemy. It is manifest that these questions are of importance to any nation in direct proportion to the extent of its maritime power; and equally manifest that, to a nation like Great Britain, which must place its main reliance upon maritime power, they are of the very highest importance. I propose, therefore, to give a short statement of the history of the matter as regards this country, and to review the successive steps that have been taken in relation to it as well as the present position in which it stands.

The right of a nation at war with another to fight and kill belligerent men must seem to all reasonable persons to imply at least an equal right to capture and confiscate belligerent property; nor has the exercise of either of these rights ever been questioned on land where to the present moment

they are exercised within limits bounded only by the necessities and convenience real or supposed of the belligerent that exercises them. Indeed a very little attention to the nature of war will show that on land no war can be carried on without the exercise of those rights, For on land war must of necessity be carried on in the territory of one or the other of the belligerents. Of two belligerents one must always be the invader and the other the invaded; and there is no single act of warfare which the invader can perform that is not an exercise of the right to appropriate the property of the invaded. The moment he crosses the frontier he seizes the roads, and in these days especially the railroads with their rolling-stock, their stations, and their whole furniture and appliances; he occupies all buildings that he may hold necessary for his purposes, he razes them to the ground if he thinks it fit; he marches over and destroys standing crops, he fells trees, he digs trenches, makes approaches, raises fortifications in and with the land of the enemy; he seizes cattle which he eats as food or employs as beasts of burden; and having seized the material property he soon seizes the money of the inhabitants. All these are the admitted and approved as well as the inevitable results of warfare, and none has ever been found to question the full exercise of the belligerent right on which they rest. If they are exercised with mildness and caution, as they will be by a

belligerent who desires to avoid exasperating the inhabitants whose property is subjected to them, or who desires to leave on his advance all the property he may want on his retreat, that does not affect the rights themselves, nor is any belligerent ever held bound to refrain from their exercise except in so far as humanity and prudence may dictate.

If it be admitted that war can be levied on the seas, it must also be admitted that the same incidental rights belong there to it; for these rights rest on the very nature of war. Neither can it be contended that the same right of sending forth volunteers to take part in the war which exists and is exercised on land, does not equally exist or may not be exercised on the seas. Moreover the practice of nations during the whole modern history of Europe has been in accordance with this principle, which, though often attacked by neutrals, was always successfully asserted and defended by belligerents up to the middle of the present century. In 1854, however, on the outbreak of war with Russia, an extraordinary transaction took place. It was to be supposed that Great Britain would maintain and act upon principles so indisputable, and which had so contributed to her greatness; and in effect on the 16th February, 1854, Lord Clarendon, in reply to a despatch from M. Lousada, directed him to be informed that the produce and property of the enemy was "lawful prize of war,"

and that "its being laden on board a neutral ship "will not protect that property;" * while on the 25th March, 1854, he wrote to a deputation of merchants "if it (Russian produce) should still "remain enemy's property, notwithstanding that it "is shipped from a neutral port and in a neutral "ship it will be condemned." † Yet the French Government has revealed the fact that while the Secretary of State for Foreign Affairs was thus declaring what would be done, the English Ambassador in Paris was at the same time (on the 14th March) declaring that he had received instructions to communicate a declaration of his Government that this same thing should not be done, and that "the neutral flag should cover the enemy's "merchandise. ‡ And on the 28th March, 1854, a notification without any signature or other marks of authority whatever was published in the *London Gazette* to the effect that the Government of Great Britain had determined to waive during the war the right of commissioning Privateers and of seizing enemy's goods (except contraband of war) in neutral vessels.§

Thus within three days of an official declaration signed by the Secretary of State, that the right of seizing enemy's goods in neutral vessels would

* *State Papers*, 1853-1854, p. 106.
† *Times* Newspaper, Mrrch 1854.
‡ *British Neutrality Laws Commission Report.*
§ *State Papers*, 1855-1866, p. 36.

be exercised, the public were informed by a notification signed by nobody that it would *not* be exercised. This is a chapter in history which loudly calls for explanation.

But the rights which had been "waived" in 1854, at the beginning of the war, were again brought under consideration in the Conference of 1856 at the end of it. On a proposal made by the English and French Plenipotentiaries, and which the Plenipotentiaries of Austria and Russia declared themselves to be unprovided for and without authority or power to accept or even to consider, a Declaration was formulated as follows:—

"ANNEXE *au Protocole No.* 23.

"*Déclaration.*

" Les Plénipotentiaires qui ont signé le Traité
" de Paris du 20 Mars, 1856, réunis en Conférence.
" Considérant:

" Que le droit maritime, en temps de guerre, a
" été pendant longtemps l'objet de contestations
" regrettables;

" Que l'incertitude du droit et des devoirs en
" pareille matière, donne lieu, entre les neutres et
" les belligérants, à des divergences d'opinion qui
" peuvent faire naître des difficultés sérieuses et
" même des conflits;

" Qu'il y a avantage, par conséquent, à établir
" une doctrine uniforme sur un point aussi im-
" portant;

" Que les Plénipotentiaires assemblés au Congrès " de Paris ne sauraient mieux répondre aux inten- " tions dont leurs Gouvernements sont animés, " qu'en cherchant à introduire dans les rapports " internationaux des principes fixes à cet égard;

" Dûment autorisés, les susdits Plénipotentiaires " sont convenus de se concerter sur les moyens " d'atteindre ce but; et étant tombés d'accord ont " arrêté la Déclaration solennelle ci-après :

" 1. La course est et demeure abolie ;

" 2. Le pavillon neutre couvre la marchandise " ennemie, à l'exception de la contrebande de " guerre ;

" 3. La marchandise neutre, à l'exception de la " contrebande de guerre, n'est pas saisissable sous " pavillon ennemi;

" 4. Les blocus, pour être obligatoires, doivent " être effectifs, c'est-a-dire, maintenus par une force " suffisante pour interdire réellement l'accès du " littoral de l'ennemi.

" Les Gouvernements des Plénipotentiaires sous- " signés s'engagent à porter cette Déclaration à la " connaissance des Etats qui n'ont pas été appelés " à participer au Congrès de Paris, et à les inviter " à y accéder.

" Convaincus que les maximes qu'ils viennent de " proclamer ne sauraient être accueillies qu'avec " gratitude par le monde entier, les Plénipo- " tentiaires soussignés ne doutent pas que les " efforts de leurs Gouvernements pour en génér-

" aliser l'adoption ne soient couronnés d'un plein " succès.

" La présente Déclaration n'est et ne sera obli- " gatoire qu'entre les Puissances qui y ont ou qui " y auront accédé.

" Fait à Paris, le 16 Avril, 1856.

" (Suivent les signatures.)"*

At the next sitting of the Conference on the 16th April, 1856, the Russian and Austrian Plenipotentiaries announced that they had now received instructions and authority to sign this Declaration, and it was signed accordingly by all the members of the Conference on that day.

It will be observed that Lords Clarendon and Cowley by their act implied that they had already received from their Sovereign a sufficient authority to sign this Declaration. It is manifest that any such authority to be good must be of a very formal, solemn, and undoubted character, for the act to be done was nothing less than the abrogation of all the principles and laws of maritime warfare hitherto admitted universally, and the abandonment of rights of the greatest possible importance never hitherto abandoned, and which, while they were waived, were at the same time expressly asserted to appertain to Great Britain in the Notification of March 28th, 1854. Yet not only no such authority, but no authority whatever has ever

* *State Papers*, 1855-56.

been produced empowering Lords Clarendon and Cowley, or either of them, to sign such a document as this. They had indeed produced in the sitting of 25th February, 1856, their full powers to make a Treaty of Peace between the Allies and Russia, but there is no reason to suppose that they were better authorized than Count Orloff or Count Buol to unmake the laws of warfare. And indeed Lord Clarendon soon after admitted in the House of Lords that he and his colleague had not "confined "themselves within the strict limits of their in- "structions." There is therefore every reason to conclude that Lords Clarendon and Cowley had no authority, and consequently no power to agree on behalf of their country to this Declaration. It forms no part of the Treaty of Peace to which alone their instructions and powers extended so far as they have been disclosed, and no disclosure has ever yet been made of any other instructions or powers whatever duly delegated to them. And while no such anterior authority has been produced to justify the signature of the Declaration, no subsequent sanction has ever been afforded to ratify it. The Sovereign of Great Britain has affixed no sign-manual to it, the Houses of Parliament, though often challenged, have always refused to confirm it by a vote; and to this day the Declaration remains what it was when signed, the act of Lords Clarendon and Cowley, done entirely without any known authority ; and if by any authority at all, by

one which must be insufficient, since neither Lord Clarendon, Lord Cowley, nor any other person, has ever ventured to disclose it.

But whatever may have been the authority to sign the Declaration, the Declaration itself furnishes the proof of its own extravagance and nullity. It sets forth that the object is to declare a "uniform "doctrine," and to lay down "fixed principles of "international maritime law;" and yet the whole Declaration affirms itself "not to be obligatory "except between the Powers who have or shall "have acceded to it." The absurd impossibility of calling by the name of uniform doctrine that which is only to be observed by those who reciprocally agree to observe it, is manifest; and no less manifest is the impossibility of regarding that as a fixed principle which is only fixed for those who accept it. The very signatory Powers it will be observed are not held bound by the doctrine or principle in general, but only as towards the Powers that may equally accede to it. It would be the height of absurdity to regard such a contradictory declaration as being entitled to respect; and by the event it was seen to be and has since remained absolutely false as a matter of fact. For the United States and Spain having declined to accede to it, privateering is *not* abolished, and the neutral flag does *not* cover the enemy's merchandise, either for those two non-declaring States or

for any one, even of the declaring States when at war with either one of them.

The Declaration itself then is false in fact, false in its statement of doctrine, of principle, and of maritime law, and, as far as Great Britain is concerned, was signed without any known authority.

If war between two nations puts an end as it does to all the treaties previously existing between them, much more must it put an end to a Declaration of this nature. Some indeed have held that this alone deprives the Declaration of Paris of all importance, since being made for war it ceases to be of effect between two belligerents when war arises. But this view rests upon a misapprehension of the nature of the Declaration itself, and is easily shown to be groundless. The fact that it was made solely with reference to a state of war may not prevent it from being terminated by war as between the belligerents; but that also does not affect it as between either of the belligerents and all the States remaining neutral. A State at war with another, both being signatories of the Declaration, may not be bound by it as towards the enemy; but it is still bound by it as towards the neutrals. And this is the whole question, for the cardinal point of the Declaration is that neutrals shall be allowed to carry on and to protect from capture enemy's commerce. The obligation is an obligation towards the neutral to spare

the belligerent; the neutral claims the fulfilment of the obligation, and the belligerent reaps the benefit of it. The consequences of this are greater than have been commonly suspected. Under the terms of the Declaration, for instance, it is not obligatory between Great Britain and the United States in case of war between them. But in case of such a war it would still be obligatory between Great Britain and the other adhering States; the result of which is that while the United States would have, under the Declaration, full power to capture British commerce in neutral vessels, Great Britain would be precluded from capturing American commerce in neutral vessels, she being bound to the neutrals themselves not to do so. She could indeed, not being bound to Spain, capture American commerce in Spanish vessels, but all other neutral flags would protect American commerce from Great Britain, and at the same time would not protect British commerce from America. Such is the inevitable result of the rules laid down by this Declaration, which professes to have established a "uniform doctrine."

In addition to this, no security can be felt that other nations signatory to it will faithfully observe it if they should hold their interests to dictate the contrary course. All experience proves that it would be futile to rely on the observance of such engagements, even when they have been put in the most binding form and made in a far more

deliberate and solemn manner than the hasty and unexpected Declaration of Paris. The armed neutrality of 1780 was formed by Russia to establish the cardinal principle of the Declaration of Paris, that the neutral flag shall protect enemy's property; but in 1793—only thirteen years later—this same Russia finding herself at war, absolutely threw over and repudiated the principle it had laid down, and both openly propounded and by force carried into effect the ancient and contrary principle, that enemy's property should be captured wherever found.

These things being so, it might be thought that it would suffice for Great Britain to let the Declaration be where it stands on its own inherent baselessness, and simply to disregard it whenever war may arise. That, however, would be a course highly immoral, highly unjust, highly dangerous, and only worthy of a Power devoid of faith. Instances of similar or rather of worse conduct are indeed not wanting. We have seen Russia tear up the Black Sea clause of that very Treaty of Paris, the Conference on which led to this very Declaration; and had the Declaration formed part of the Treaty it must have disappeared with the infraction of any other part of it. For assuredly if a solemn Treaty, made with full powers and duly ratified may be repudiated, much more may a declaration made without powers and never ratified.

But although not legally bound by this Declaration, Great Britain is in honour bound to it, unless and until it is formally repudiated. Its informality, its want of authority, its falsehood in fact and in principle, are of the highest importance to be kept in view, because they allow and even invite its repudiation in time of peace; not because they would excuse its repudiation in or on the outbreak of war. The Declaration can be repudiated; it cannot be ignored. Although no authority to sign it has ever been disclosed, although it has never been affirmed by the Houses of Parliament or ratified by the Sovereign, still it was signed with an affectation of authority by an English Secretary of State and an English Ambassador. By all therefore, except by those who would have Great Britain emulate Russia in tearing up all engagements when it suits her and circumstances give her the power to do it in despite of all faith and honour, this Declaration must be accepted as being at present binding on Great Britain. But though it is binding it is not irrevocable. The act that was done in the dark without authority may be undone in the day with authority. It is absolutely within the competency of the Crown, either of its own proper motion, or moved thereto by an Address from the Houses of Parliament, to declare that the Declaration of Paris is no longer accepted by it as the rule of maritime warfare, and thus to revert to the common rights of all warfare. But

until the act of the two Plenipotentiaries who assumed to sign on behalf of Great Britain in a matter beyond their powers shall have been denounced, and the Declaration itself openly declared to be no longer binding, so long must it and will it be binding on Great Britain.

II.—The Effect of the Declaration of Paris on Great Britain.

The Declaration of Paris affirmed four rules or laws of Maritime Warfare, of which two are old and true, and two new and false.

Those which are old and true are those which declare (1) That, "neutral merchandise, with the "exception of contraband of war, is not liable to "capture under the enemy's flag;" and (2), that "blockades, in order to be obligatory must be "effective, that is to say, maintained by a suffi- "cient force really to prevent access to the coast "of the enemy."

Those which are new and false are those which declare (1) that "Privateering is and remains "abolished;" (2) that "the neutral flag covers the "enemy's merchandise, with the exception of con- "traband of war."

The two former rules of the Declaration can not only be admitted, but must be affirmed to be truly consonant with the Law of Nations; the two latter

are as absolutely in contradiction of it and of the facts, as has already been shown; and with these two latter we are therefore alone concerned.

The effect of them upon Great Britain is without doubt and beyond question greater than upon any other Power; because Great Britain being the principal maritime Power in the world must feel more than any other the effects of any change in the laws of Maritime Warfare. And the fact that Great Britain has shown herself before the change was made able to resist the whole of Europe in arms, and to come victorious out of the struggle by the very aid of the very principles now declared to be abrogated and reversed, must lead us to conclude *in limine*, that the change made is one fraught with especial disadvantage to her. Let us however examine the changes themselves and their effects.

I.—"Privateering is and remains abolished"—that is to say, is abolished for Great Britain whenever she is at war with any other States than the United States or Spain; but not when she is at war with either of those two. The effect of this is to deprive Great Britain of the services of volunteers at sea, and to preclude her from employing in warlike operations either the vessels or the men of her vast mercantile marine; for a Privateer is but a private vessel commissioned by the State. She loses thus not only an offensive but also a defensive weapon; for Privateers do not only capture

enemy's vessels, but also recapture those of their own nation; and they are to the State Navy a most valuable auxiliary, without which an amount of power proportioned to the size of the mercantile marine of the State remains unemployed in time of war. She loses the power of withdrawing a considerable number of merchant-vessels from exposure to the enemy as unarmed merchantmen by turning them into offensive weapons as armed cruisers, and thus at once diminishing the number of vessels liable to be captured and increasing the number of those able to capture. She loses one of the best schools for the formation of daring and adventurous sailors, and with it those traditions of prize-money won in conflict, which have always been found the most urgent incentive to daring and adventurous men.

It has indeed been said that the general exercise of the right to arm and commission Privateers would act most injuriously for Great Britain, seeing that she of all nations in the world has the largest amount of commerce on the seas exposed to capture. And the abolition of privateering which was assumed to be made by the Declaration of Paris of 1856 has even been represented as a gain to Great Britain sufficient to warrant her in giving up the right to seize enemy's goods in neutral vessels.

This argument is a specious one, but when looked at for a moment it entirely falls to pieces. The

answer to it is so apparent and so complete that nothing but surprise can be felt that any who profess to have thought on the subject could ever have been misled by so transparent a fallacy; and it is only because many have been so misled that it is worth while here to set down the answer.

In the first place it is clear that to take merchant vessels, and to arm and commission them as privateers, is at once to withdraw those vessels from the category of undefended merchantmen liable to capture, and to bring them into the category of State vessels able themselves to capture. Every privateer is at once a vulnerable point the less and a weapon the more. Every commission issued to a merchantman therefore diminishes the number of defenceless vessels by one ship, and adds one ship to the number of defending vessels. Moreover it is to be remembered that the more commerce a nation has afloat the more vessels are there required for its defence, and therefore the more reason for accepting the services of volunteers to aid in that defence.

It is apparent then that to reject the assistance of the merchant navy, whether to defend itself alone by virtue of letters of marque, or at once to defend and to attack by virtue of letters of marque and reprisals, such as the Privateer properly so-called receives, is to reject a defence of higher and greater importance to Great Britain than to any other country.

Moreover a very important element in the

matter, and one which seems to have been totally forgotten and overlooked, is the fact that privateers are as valuable for defence as they are for attack. The rule that enemy's property in *enemy's* ships is liable to capture by State cruisers has never yet been invalidated, and all English commerce would therefore to this extent be liable to capture if we were at war to-morrow. But, now, any English vessel thus captured must be sent into port for adjudication in charge of a prize crew. Under these circumstances she becomes at once liable to recapture; and this in fact is the very case in which maritime supremacy most makes itself felt. A country that is strong on the seas must of necessity have on the seas a large commerce, for it is thence only that maritime strength can he derived. Of necessity therefore it must have much property exposed to capture by the enemy. But its security is that if it has a preponderence at sea, if it has a greater number of cruisers, and if it *does* increase their number by adding to them all the privateers that offer, it becomes all but impossible for the enemy to reach his ports with any captures he may make. He may seize but he can rarely enjoy, for before the prize can reach his port it is all but certain to be recaptured. This is no fancy picture; it is precisely what has occurred in all the great maritime wars in which privateers have been employed.*

* "No Privateers were then (1801) allowed to be fitted "out from France; consequently no recaptures which were

The question is not one of the liability of English commerce to capture in case of war—for it must always be liable to that—but it is this—Whether in case of war, by the employment on both sides of Privateers Great Britain would inflict or would suffer the most injury. The fact that this country possesses a far larger number of merchant vessels than any other Power is in itself a sufficient solution of the question, since it shows that she could send out more Privateers than any other, or indeed than all the others put together. She has therefore the most to gain of any Power by using this arm, since she could use it with the greatest effect against her enemy's trade. She has least to lose by using it, since by using it she could the best protect her own trade. The first immediate object of maritime warfare is to drive the enemy's flag from the seas (as was done in 1799 and in 1805), and to cover them with our own. The more completely this is effected, the less will our commerce suffer, for the less chance will the enemy have of making a capture or of getting it to port without being recaptured; and this can only be effected with any completeness at all by the use of Privateers, who will range all seas in search of prize and salvage-money.

The case of the *Alabama* has often been cited to

"formerly almost a certain thing."—*Life of Sir W. Parker.* London, 1876, p. 166.

show the damage a single cruiser may inflict on a largely extended commerce, and to prove that privateering would be as injurious to a nation with a large trade, as was the *Alabama* to the United States. But the case of the *Alabama* was not the case of a privateer, and has no analogy with it. The action of the *Alabama* was piratical, for her captain destroyed property and vessels without any regular examination and condemnation of them—without any judgment of any Admiralty Court and upon his own sole fiat. And the responsibility of those acts having been brought home to Great Britain, Great Britain was made to restore the value of what was so destroyed. Moreover the course pursued by the captain of the *Alabama* which was that, not of capturing, but of destroying property, is a course which no Privateer would pursue. The immediate object of the Privateer is exactly the reverse of this—it is not to destroy but to preserve property, and to have it confiscated to his profit, which he can only do by taking it into port. A State vessel indeed may in the interest of the Government destroy, but not the Privateer. In the very nature of the case it is necessary for him to carry his capture into a safe port, a matter of ease and almost of course if his country commands the seas, but a matter of the greatest difficulty and almost of impossibility if the enemy commands them. The only kind of vessel that could ever repeat operations

like those of the *Alabama* must be a State-vessel, and it is supremely ridiculous that the doings of that vessel should be held up as showing the injuries a Privateer would do to an extended commerce, since that kind of injury is precisely that which no Privateer would inflict.

There are those who affect to believe that it would be allowable for a belligerent to fit out Privateers in neutral ports, and imaginary pictures have been drawn of British commerce falling a prey to the depredations of Privateers armed in the United States in case of a war with any European Power.* It must however be assumed by those who use this as an argument that a neutral has the right to allow armed expeditions to issue from its ports against a belligerent, a notion too monstrous to originate in anything but complete ignorance of the subject, and one which was as solemnly denounced by every member of the Geneva Tribunal, as it has been by every publicist.†

* "It was well known that at the commencement of the "Crimean war, the Russian Government was going to "commission privateers from the United States, and it was "only the Declaration (of Paris) in question which saved the "world from a horde of pirates issuing from the United "States under the Russian flag."—Mr. Evelyn Ashley in the House of Commons, 13th April, 1875.

† As the subjects are not under an obligation of scrupulously weighing the justice of the war, which indeed they have not always an opportunity of being thoroughly acquainted with, and respecting which they are bound in case of doubt to rely on the Sovereign's judgment—they unquestionably may with

And it is remarkable that the United States, the very power singled out as being ready to make this infraction of the duties of neutrality, is the very power which has made the latest and the

a safe conscience serve their country by fitting out Privateers, unless the war be evidently unjust. But on the other hand it is an infamous proceeding on the part of foreigners to take out commissions from a prince in order to commit piratical depredations on a nation which is perfectly innocent with respect to this.—Vattel (Chitty's translation), Book iii. cap. xv. § 229.

Les souverains neutres sont dans l'obligation non seulement de défendre à leurs sujets d'accepter cette mission de guerre, mais encore de prendre toutes les mesures en leur pouvoir pour s'opposer à cette violation des devoirs de la neutralité. C'est pour remplir cette devoir que les lois intérieures de la plupart des Etats défendent expressément aux sujets d'accepter des lettres de marque etrangéres.—Hautefuille, *Droits et Devoirs des Nations Neutres*, Vol. I. p. 154. *See* also Martens, Vol. IV. p. 209.

A Power which sends assistance in troops or money to one of the belligerent Powers, or even in strictness which permits its subjects to take out letters of marque from the enemy in order to fit out a Privateer, can no longer demand to be treated as a neutral power.—Masters, *on Captures*, p. 217.

A neutral Government is bound to use due diligence to prevent the fitting out, arming, or equipping within its jurisdiction of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adopted in whole or in part, within such jurisdiction, to warlike use.—Rules for the Award of the Geneva Tribunal on the Alabama Claims. Treaty of 8 May, 1871.

The United States by this treaty "agrees to observe the rules as between Great Britain and itself in future."

most effectual protest against it, and has claimed and received damages for such an infraction.

It is clear that if, as is alleged, a navy so large and powerful as that of Great Britain would not suffice for the adequate protection of her own commerce, it would, *a fortiori*, not suffice at once for that and for adequate attack on the enemy's commerce. A great part of the latter must, therefore, escape capture, and any war must, *pro tanto*, be so much the more prolonged, unless means can be used beyond those afforded by the State navy. These means are at hand in Privateers. There can be no doubt that any maritime country would be able at once on the outbreak of war to obtain the services in this capacity of a considerable proportion of its merchant vessels, since by the very outbreak of war, many of them would necessarily be thrown out of their ordinary employment, especially those whose trade had hitherto been with the other belligerent; and many of the owners would gladly avail themselves of letters of marque and reprisals, in order to indemnify themselves by prize and salvage-money for the trade they had now lost. The seas would thus assuredly be covered with cruisers sufficient to deal with the whole commerce of the enemy; for wherever such commerce existed there would exist a sufficient inducement for the privateer to go forth to its capture.

But even if it were true, which it is not, that the abolition, so called, of Privateering were an equi-

valent advantage to Great Britain, for the disadvantage in the admission of the doctrine that the neutral flag covers enemy's merchandise, there is as we shall see no security in the nature of the compact that the advantage would be reaped, although there is every security that the disadvantage would be inflicted.

Privateers, however, in any case are and must be useless unless there be property on the seas liable to capture. The first article therefore of the Declaration derives all its importance from the second, which is,

II.—"The neutral flag covers the enemy's merchandise, with the exception of contraband of war."

This is the kernel of the whole matter, the one truly important point to which all the rest is subsidiary, and to affirm which the Declaration was made. Let us examine its effects.

a. In the first place, it absolutely withdraws all property at sea, except contraband of war, from all the incidents of war. By so much, therefore, it lessens the power of a belligerent State to carry on war at all; and for a State like Great Britain, of which the main power is on the seas, it reduces the power of making any war to a minimum. For, as a matter of course, it will be found, indeed as a matter of fact it has been found, that any State at war with Great Britain would at once place the whole of its sea-going commerce under the neutral

bunting which is by this article declared to be in itself and by itself a sufficient protection to that commerce against capture.

b. It reduces therefore the power of Great Britain in war by the whole amount of injury capable of being inflicted on an enemy through his commerce. And as the amount of injury that could be inflicted by this means must be in proportion to the maritime strength of the nation inflicting it—it follows that, by so much greater as is the maritime strength of Great Britain than that of any other nation, by so much greater is the loss of power which she sustains in comparison with any other nation.

c. It absolutely destroys the utility of blockade. For the utility of blockade lies in this, that it prevents the enemy from trading to and from receiving supplies through the blockaded ports. But there is no loss to him in this, and therefore no pressure exercised by it or utility in it, if at the same time that his own ports are blockaded—even though all of them should be—he is able to carry on his commerce and to receive his supplies through the most adjacent neutral ports under the protection of the neutral flag. And by so much greater as is the blockading strength of Great Britain than that of any other nation, by so much greater is the loss of power which she sustains in comparison with any other nation.

d. It relieves a belligerent from the necessity of

defending his commerce (since it is protected by the neutral flag), by his fleet, and relieves him, therefore, from the urgent necessity of sending his fleet to sea. In a war with a State superior in naval power it would enable him to keep his fleet in his ports altogether, conscious as he would be that with the neutral flag doing its chief work there would be little but disaster to be looked for in naval conflict. The greater the disparity of strength, the greater would be the inducement to the weaker to avoid conflict on the seas with the stronger State; and by so much as is the navy of Great Britain superior to that of any other nation, so much the more certainly would it lack all opportunity of naval conflict.

e. It deprives the officers and men of the navy of all chance of prize-money, and thus not only removes a great incentive to zeal and activity among those in the service, but also greatly diminishes the inducements by which the manning of the navy may be renewed.

f. It exposes the carrying-trade of a belligerent to the certainty of extinction. For through the absolute protection afforded by the neutral flag it must necessarily so operate as to drive all commerce from belligerent into neutral bottoms.* And by so

* *See* Report of the Select Committee on Merchant Shipping, 1862, evidence of the shipowners, Mr. Allan Gilmour, Mr. Beazley and Mr. Groves. "A short time ago, "when it was thought England might be involved in the war

much as the carrying-trade of Great Britain is greater than that of any other nation by so much greater would be the loss inflicted on her in war.

g. Finally, it tends to increase the duration of wars by removing from their incidence the commerce which furnishes the sinews of war, and by giving to the neutrals a direct interest in the prolongation of a conflict which very greatly increases their own profits in the carrying-trade.

There are, indeed, those who contend that this new principle of neutral protection to belligerent property is not disadvantageous but, on the contrary, advantageous to Great Britain. They remind us that Great Britain is dependent upon sea-borne commerce for the supplies of a large proportion of her food and raw produce; and argue that, therefore, she is advantaged by the general prohibition to touch any commerce under the neutral flag, since it affords to her commerce protection in time of war. But it must be remembered that the protection is only afforded on condition of removing the commerce from British to foreign vessels, on

"between France and Austria in Italy, however improbable "the rumour might be, yet the moment it reached distant "ports—such as Canton or Calcutta—a second-class American "vessel was able to get freights at a fifty per cent. higher "rate than a first-class British ship could obtain."—Mr. Horsfall, in the House of Commons, 11th March, 1862. *See* also Mr. Lindsay's letter to Lord John Russell of 14 Oct. 1859. —*Parliamentary Papers*, 1859.

condition, that is to say, of excluding British ships from carrying British trade, and with the effect, as already has been pointed out, of destroying British shipping altogether. It offers Great Britain protection to her merchants only together with and in exchange for destruction to her shipowners, which is clearly not advantageous to a country in which the shipowner with his ships and crews are the very foundation of the national strength. Moreover, Great Britain of all countries least needs to receive from neutral bunting that protection to her commerce which in time of war she of all nations is best able to extend to it by her fleets. The changes in ships and armaments and the introduction of steam have all left her comparatively stronger at all points than before those changes were effected; for she is now more than ever the leader and mistress in the arts of naval construction, armaments and machine-engineering, so much so that the foreign nations have not even learnt yet to imitate her, but still come to her to purchase the vessels, the guns and the engines which she alone can produce. She is far better able to convoy her commerce than any other nation, and far better able also to attack successfully her enemy's convoys. The relative disadvantage to Great Britain, therefore, inflicted by the Declaration of Paris which substituted neutral bunting for convoying fleets, is as much greater to her than to any other country as her power to convoy and

to attack convoys is greater than that of any other country with whom she may be at war.

It is said, however, that the commerce of Great Britain being greater than that of any other country would be more exposed to attack. That is no doubt true, yet it implies no relative disadvantage, but the contrary. For if the area of the body exposed to attack is greater, so also is the strength of the arm to defend it and to attack in turn. If she has more seamen than other nations it follows that she has more men to fight as well as to trade on the seas; if more vessels, then more power to transport those men to the points where fighting may usefully be done. It is that very commerce which provides her with men to fight and supplies to furnish them ; the greater it is the larger is the recruiting-ground whence the force is derived to protect it, and to injure the enemy. It has never been pretended that on land a great populous nation full of able-bodied men engaged in hardy industrial operations is weaker than a small and sparsely peopled country, even though there be more plunder exposed to capture in the former than in the latter. By surprise the smaller may snatch a richer prize than the stronger, but the stronger will assuredly soon wrest that away and much more with it. In war it is not rich possessions which count as weakness but offensive power which counts as strength. Nobody would say that two men would be at a

disadvantage in a conflict against one, because they expose two bodies to his blows, and he only one to theirs; for they have two pairs of arms, and he only one. A war in which commerce should not be protected by neutral bunting from its incidents must involve for Great Britain not only the necessity for defending her own commerce by arms, but also the power of attacking by arms her enemy's commerce. To suppose that she would lose more than she gains or anything like as much under such circumstances, is to suppose that a nation's strength is the measure not of its power but of its weakness. She would suffer damage herself no doubt, but if strength be of any avail at all she must do far more than she suffered. War is successful in proportion to the injury inflicted on the enemy, and we had better entirely ruin him, even at the cost of half ruining ourselves, than not ruin him at all. Experience has, however, shown that Great Britain before she had been held bound by the Declaration of Paris was strong enough on the seas not only to destroy her enemy's commerce, but at the same time to defend and even to increase her own.*

* The merchant-ships of Great Britain (in 1810) carried most of the commerce of the world, and in spite of having to make head against numerous open enemies and the scarcely veiled hostility of the Government of the United States—whose ports remained closed to British ships of war, though they did not declare war till 1812—England was yet able to keep down the enemies' vessels of war and privateers. The

Others there are who while they admit that Great Britain has been placed under a grave disadvantage by accepting the doctrine that the neutral flag covers enemy's goods, declare that she at the same time gained a compensating and equivalent advantage in the abolition, so-called, of Privateering. The Declaration of Paris, they say, was of the nature of a bargain in which a valuable right was given for a valuable immunity. But unfortunately for those who so argue, the terms of the bargain are such that while every security is afforded that the right shall not be exercised, no security whatever is given that the immunity shall be enjoyed. The obligation to allow the neutral flag to cover enemy's goods, is an obligation towards all the States which shall remain neutral during the war, they profit by it, they have every interest in enforcing it and every right to resist its infraction. It is an obligation towards all the world less the other belligerent, and one which all the world has a clear right to enforce and a paramount interest

prosperity of the country was steadily on the increase. The exports from Great Britain and Ireland, which were twenty-eight millions at the commencement of the war, exceeded forty-five millions and a half in 1809. The imports which were twenty-five millions in 1803, were in 1809 thirty millions, and both imports and exports increased steadily while the war lasted, inasmuch that in 1815 the imports had risen to nearly thirty-two millions, the exports to fifty-seven millions and a half, and the trade was carried on almost exclusively in English bottoms.—*Life of Sir W. Parker*, p. 395.

in enforcing. Not so the obligation to desist from privateering. In that the belligerent is bound towards the other belligerent alone, and if he chooses to break his obligation there is none to enforce it except that other belligerent, who being already engaged in levying war upon him is already doing his worst, and can do no more. The result is that while there is every security against the infraction of the one obligation there is every inducement to the infraction of the other, should its infraction promise advantage; and that whenever Great Britain shall be at war, she will be exposed at once to suffer all the disadvantage inflicted by the Declaration, and to reap none of the advantage said to be afforded by it. That this is no idle fear is proved by the language of the Russian press and merchants, who, recently forecasting the chances of a war with Great Britain, openly advised their Government to repudiate the first rule of the Declaration of Paris and to fit out privateers against British commerce.

Another set of arguments, if arguments they can be called, in favour of the Declaration of Paris is founded upon the change in the conditions of naval warfare resulting from the employment of steam and armour. This change it is said places Great Britain at a disadvantage, as compared with other nations, in fighting out a great conflict at sea. It is only necessary to say in answer to this that Great Britain has profited far more than any other

nation by steam and armour; that all other nations are compelled to take lessons from her in both, or even to come to her to provide them, and that, therefore, whatever advantage she may have had before their introduction is very greatly increased since.

One advantage, indeed, Great Britain gains under certain circumstances and in certain times from the Declaration of Paris. She gains the carrying-trade of any nations which may be belligerent and exposed to maritime attack while she remains neutral. But this gain is very small. The carrying-trade is already to a large extent carried on for other nations by British vessels, and that which she can gain from any one other State is but a small and comparatively insignificant addition to that which she already has. What there is to be gained, however, she gains; but on the other side of the account must be put that which she must lose when she herself becomes belligerent. That loss amounts to the whole of her own carrying-trade, which is more than all that she could gain from other nations during a century of wars. And there is this further about it, that while she may make an infinitesimally small gain as a neutral in times of prosperity she must sustain an immeasurably great loss as a belligerent in times of extremity. There can be no advantage in this.

There are indeed some who have not hesitated

to assert that Great Britain would gain by carrying still further the renunciation of belligerent maritime rights; and who assert that it would be to her advantage to accept and adopt the principle that all "private property" whatever (including even contraband of war) shall be exempt from capture at sea; that is to say, shall be exempt from all effects of warfare.* This is indeed a logical conclusion for those to leap to who feel that the Declaration of Paris cannot be defended as it stands; but it is a conclusion none the less monstrous in itself. Those who advance it may properly be required to consider the nature of war and to say how or upon what possible principle there can be at one and the same time a national war and a commercial peace; upon what possible ground exemptions can be claimed for private property at sea not extended to it on land; and upon what conceivable theory of the State it should be required to permit even its own subjects to supply its enemies with arms and munitions of war to be used against it. Till these questions are satisfactorily answered, which they never can be, it would be idle to discuss the principle of this proposed new and further innovation. But as regards the effect such an innovation would have upon Great Britain, it would be simply this, that it would abolish maritime warfare altogether. Even the Declaration of Paris leaves enemy's

* *Edinburgh Review* for October, 1876.

property in enemy's ships liable to capture; this would relieve it from that liability: even the Declaration of Paris leaves contraband of war in neutral ships liable to capture; this would relieve it from that liability, and we should have in all wars the monstrous spectacle of soldiers and sailors destroying each other while their own fellow-countrymen were furnishing to their enemies the instruments of their destruction. A State, so far removed and isolated from other nations, and so unlikely ever to be at war with them, as to be able to look for profit alone in their wars without having to fear any, even the remotest possibility of becoming itself involved in war, might perhaps hold such a condition of things to be advantageous to it; or a purely military State unable to defend or to carry on its sea-borne commerce during war might gain by it; but for a maritime country to agree to it would be the height of madness. Neither has it ever been seriously proposed by any person of authority in England, or by any other person except as a desperate attempt to escape from the consequences of the Declaration of Paris in its admitted and inevitable effect upon the British carrying-trade during war.

On a review of the whole matter it must be evident that Great Britain, so long as she remains bound by this Declaration, must in any war be debarred from the exercise of the greater part of her maritime strength. The knowledge that this

is so, materially affects her position in peace, and deprives her of the weight and authority which her voice always had so long as it was known that it was capable of being supported by the tremendous force which so pre-eminent a maritime power could bring to bear on the resources of an enemy.

By all that has preceded it has, I submit, been abundantly made clear that the principles assumed to be laid down by the Declaration of Paris in prohibiting Privateering and the capture of enemy's merchandise in neutral bottoms, are novel innovations in and at variance with the Law of Nations; that the Declaration itself is false both in fact and in principle; that it possesses no sufficient authority; and that it is so highly injurious to the interests of Great Britain as to amount to the deprival of the greater part of her warlike strength.

This being so it follows that the very first duty of all British statesmen, who have at heart the interest and the security of their country, is to free her from the paralyzing fetters of this Declaration. In order to effect this it is necessary that the Declaration should be openly denounced and repudiated; for until it is repudiated it must be held as binding. Its falsity and the want of previous authority and subsequent sanction are not sufficient to allow it to be simply disregarded; but they are more than sufficient to invite its denunciation and repudiation. A simple announce-

ment by diplomatic note to the signatory Powers would suffice for this; and from the day that Great Britain simply announces her resumption of the maritime rights which made her powerful and kept her secure, from that day and not before it will she resume her place among the nations of the earth which are respected because it is known that they are strong.

APPENDIX A.

HARTWELL HORNE, PAGE 3.

WITH regard to the issuing of letters of marque, the Lord High Admiral of Great Britain, or the Commissioners appointed for executing that office, or any three of such Commissioners, or any persons by them empowered or appointed, shall at the request of any duly qualified owner or owners of any ship or vessel duly registered according to the directions of the Act passed in the twenty-sixth and thirty-fourth years of his present Majesty (26 *Geo. III. c.* 60, *and* 34 *Geo. III. c.* 68) (provided such owner or owners give the bail or security hereafter specified), cause to be issued in the usual manner one or more commissions or letters of marque and reprisal, to any person or persons nominated by such owner to be commander, or (in case of death, successively) commanders of such ship or vessel; for the attacking, surprising, seizing, and taking, by and with such vessel or with the crew thereof, any place or fortress upon the land, or any ship, vessel, arms, ammunition, stores of war, goods or merchandise, belonging to or possessed by any of his Majesty's enemies, in any sea, creek, haven, or river (13 *Geo. II. c.* 4, § 2; 33 *Geo. III. c.* 66, § 9; 43 *Geo. III. c.* 160, § 7).

All persons applying for such commissions or letters of marque must make the application in writing, subscribed with their hands, to the Lord High Admiral, or other persons thus empowered, or to the Lieutenant or Judge of the High Court of Admiralty, or to his surrogate, and such application must set forth "a particular, true and exact description of the ship or vessel for which such commission or letter of marque and reprisals is requested, specifying the name and burden of such ship or vessel; what sort of build she is; and the number and nature of the guns, and what other warlike furniture and ammunition are on board the same; to what place the ship

belongs; and the name or names of the principal owner or owners of such ship or vessel; and the number of men intended to be put on board the same (all which particulars must be inserted in every commission or letters of marque); for what time they are victualled, and also the names of the commander and officers (33 *Geo. III, c.* 66, § 15; 43 *Geo. III, c.* 160, § 13. *Instructions for letters of marque against the goods of the French and Batavian Republics, Art.* 6. Note—The Instructions respecting the former were issued on the 17th May, 1803, concerning the letter on June 16th, 1803).

Further, every commander of a private ship or vessel of war, for which such commission or letters of marque shall be granted, must produce the same to the collector, customer, or searcher for the time being, of his Majesty's customs, residing at or belonging to the port whence such ship shall be first fitted out, or to their lawful deputies. And such collector, customer, &c. shall without fee or reward and as early as conveniently may be inspect and examine the said vessel; in order to ascertain her build and burden, the number of men, together with the number and nature of the guns on board. If after examination, such vessel appear to be of such build and burthen, and to be manned and armed according to the tenor of the description inserted in the commission or letter of marque; or if she be of greater force and burthen than is therein specified; in such case the collector, &c. or his or their deputies shall immediately upon the request of the commander of such ship or vessel, give him gratis a certificate thereof in writing under his or their hand or hands; and such certificate shall be deemed a necessary clearance before the vessel or letter of marque thus commissioned, shall be permitted to sail from that port (33 *Geo. III. c.* 66, § 15; 43 *Geo. III. c.* 160, § 13).

The same statute likewise declares that in case any commander proceed out of port upon a cruize without such certificate of clearance, or with a force inferior to that specified in the commission or letter of marque, the latter shall be absolutely null and void: the commander thus offending shall be subject to the penalty of £1000, recoverable with full costs of suit by any person, and shall also be imprisoned

for such space of time as the Court shall direct, not exceeding one year for any one offence (*Ibidem*).

The collector, searcher, &c. or his or their deputies, who shall grant false certificates, shall for such offence forfeit their office; be for ever incapacitated from holding office under Government, and incur a penalty of £100, to be recovered in a similar manner. One half of the said penalty when recovered to be paid to the informer; and the other moiety to the treasurer of the Corporation for the Relief and Support of the Sick, Maimed, and Disabled Seamen of the Merchant Service: and if such forfeiture be incurred in any outport, where a Corporation already is or may hereafter be established for those purposes, one moiety of the penalty is to be paid to the trustees for the use of such Corporation (33 *Geo. III. c.* 66, § 16; 43 *Geo. III. c.* 160, § 14).

Previously however to obtaining letters of marque, bail must be given with sureties before the lieutenant and judge of the High Court of Admiralty or his surrogate, in the sum of £3000 sterling if the ship carry more than 150 men, and if she carry a less number in the sum of £1500 sterling (*Instructions for letters of marque, &c, Art.* 15). Further, such sureties must prior to their being bound severally make oath before the Judge of the said Court of Admiralty of England, or Judge of any other Court of Admiralty in any other part of his Majesty's dominions, or his or their surrogates, that they are respectively worth more than the sum for which they are to be bound, over and above all their just debts. And in order to prevent frauds the Marshal of the Admiralty Court is enjoined to make diligent inquiry into the sufficiency of such bail and security, and to make report accordingly to the Judge or his surrogate before any commission or letter of marque can be granted (43 *Geo. III. c.* 160, § 12).

No Judge of any Vice-Admiralty Court established in the West Indian or American colonies can either directly or indirectly have any share or interest whatever in any privateer or letter of marque (41 *Geo. III. c.* 96, § 17). Nor can any judge, advocate, marshal, proctor, or any other officer of any Admiralty or Vice-Admiralty Court, either in England or

in the Colonies possess any such interest, on pain of forfeiting his employment and also the sum of £500 to the use of his Majesty. And all advocates and proctors thus offending are for ever disqualified from practising their professions (33 *Geo. III. c.* 66, § 33; 43 *Geo. III. c.* 160, § 32).

Letters of marque are always subject to revocation.

APPENDIX B.

Letters of Marque, or Privateer's Commission, 1812.

George the Third by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to all people to whom these presents shall come, greeting. Whereas in consequence of the repeated insults and provocations which we have experienced from the Government of France we find ourselves compelled to take such measures as are necessary for maintaining the honour of our crown and the just rights of our subjects, and have, therefore, by and with the advice of our Privy Council, ordered that general reprisals be granted against the ships, goods and subjects of the French Republic, so that as well our fleets and ships as also all other ships and vessels that shall be commissionated by letters of marque and general reprisals or otherwise shall and may lawfully apprehend, seize and take the ships, vessels and goods belonging to the French Republic or to any persons being subjects of the French Republic or inhabiting within any of the territories of the French Republic, and bring the same to judgment in our High Court of Admiralty of England, or in any of our Courts of Admiralty within our dominions for proceedings and adjudication and condemnation to be thereupon had according to the course of Admiralty and the Laws of Nations; and whereas by our commission under our Great Seal of Great Britain, bearing date the 16th day of May, 1803, we have willed, required and authorized our Commissioners for executing the office of Lord High Admiral of our said United Kingdom, or any person or persons by them

empowered or appointed to issue forth and grant letters of marque and reprisals accordingly, and with such powers and clauses to be therein inserted, and in such manner as by our said commission more at large appeareth. And whereas our said Commissioners for executing the office of our High Admiral aforesaid have thought *W. B.* fitly qualified who hath equipped, furnished and victualled a ship called the , burthen of about tons (*here descriptive particulars are added*) and masts, mounted with carriage guns, carrying shot of pounds weight, and swivel-guns, and navigated with men, of whom one-third are landsmen, and belonging to the port of , whereof the said *W. B.* is commander, and that *N. N.* are the owners. And whereas the said *W. B.* hath given sufficient bail and sureties to us in our said High Court of Admiralty according to the effect and form set down in our instructions made the 17th day of the aforesaid month of May in the 43rd year of our reign, a copy of which is given to the said *W. B.* Know ye therefore that we do by these presents issue forth and grant letters of marque and reprisals to, and do license and authorize the said *W. B.* to set forth in a warlike manner the said ship called the , under his own command, and therewith by force of arms to apprehend, seize, and take the ships, vessels, and goods belonging to the French Republic, or to any persons being subjects of the French Republic, or inhabiting within any of the territories of the French Republic, excepting only within the harbours or roads of princes and states in amity with us, and to bring the same to such port as shall be most convenient, in order to have them legally adjudged in our said High Court of Admiralty of England, or before the Judge of such other Admiralty Court as shall be lawfully authorized within our dominions, which being finally condemned, it shall and may be lawful for the said *W. B.* to sell and dispose of such ships, vessels, and goods so finally adjudged and condemned in such sort and manner as by the course of Admiralty hath been accustomed. Provided always that the said *W. B.* keep an exact journal of his proceedings, and therein particularly take notice of all prizes which shall be taken by him, the nature of such prizes,

the times and places of their being taken, and the values of them as near as he can judge, as also of the station, motion, and strength of the French as well as he or his mariners can discover by the best intelligence he can get, and also of whatsoever else shall occur unto him or any of his officers or mariners or be discovered or declared unto him or them or found out by examination or conference with any mariners or passengers of or in any of the ships or vessels taken or by any other person or persons or by any other ways and means whatsoever touching or concerning the designs of the French or any of their fleets, vessels, or parties and of their stations, ports and places, and of their intents therein, and of what ships or vessels of the French bound out or home, or to any other place, as he or his officers or mariners shall hear of, and of what else material in those cases may arrive to his or their knowledge, of all which he shall from time to time as he shall or may have opportunity transmit an account to our said Commissioners for executing the office of our High Admiral aforesaid or their secretary, and keep a correspondence with them by all opportunities that shall present. And further provided that nothing be done by the said *W. B.* or any of his officers, mariners, or company contrary to the true meaning of our aforesaid instructions, but that the said instructions shall by them and each and every of them as far as they or any of them are therein concerned in all particulars be well and truly performed and observed. And We pray and desire all kings, princes, potentates, states, and republics being our friends and allies and all others to whom it shall appertain to give the said *W. B.* all aid, assistance, and succour in their ports with his ship, company, and prizes without doing or suffering to be done to him any wrong, trouble, or hindrance We offering to do the like when we shall be thereunto desired, and We will and require all our officers whatsoever to give him succour and assistance as occasion shall require. In witness whereof we have caused the Great Seal of our said Court to be hereunto affixed. Given at London the fifth day of September in the year of our Lord one thousand eight hundred and twelve, and in the fifty-second of our reign.

REGISTRAR.

APPENDIX C.

Instructions for Privateers, 21 June, 1815.

In the name and on the behalf of His Majesty,
GEORGE P. R.

Instructions for the commanders of such merchant ships or vessels who shall have letters of marque and reprisals for private men-of-war, against the ships, goods, and subjects of France by virtue of our commission granted under our Great Seal of our United Kingdom of Great Britain and Ireland, bearing date the twenty-first day of June, one thousand eight hundred and fifteen. Given at our Court at Carlton House the twenty-first day of June, one thousand eight hundred and fifteen, in the fifty-fifth year of our reign.

Article I.—That it shall be lawful for the commanders of ships, authorized by letters of marque and reprisals for men-of-war, to set upon by force of arms and subdue and take the men-of-war, ships, and vessels, goods, wares, and merchandises belonging to France, or to any persons being subjects of France, or inhabiting within any of the territories of France, saving always such exceptions as we shall at any time or times hereafter be pleased to declare; but so as that no hostility be committed, nor prize attacked, seized or taken within the harbours of princes and states in amity with Us, or in their rivers or roads, within the shot of their cannon, unless by permission of such princes or states, or of their commanders or governors-in-chief in such places.

II.—That the commanders of the ships and vessels so authorized as aforesaid shall bring all ships, vessels, and goods which they shall seize and take into such port of this our realm of England, or some other port of our dominions as shall be most convenient for them, in order to have them legally adjudged in our High Court of Admiralty of England, or before the Judge of any other Admiralty Court lawfully authorized within our dominions.

III.—That after such ships, vessels, and goods shall be taken and brought into any port, the taker, or one of his chief officers, or some other person present at the capture, shall be obliged to bring or send as soon as possibly may be three or four of the principal of the company (whereof the master, supercargo, mate, or boatswain, to be always two) of every ship or vessel so brought into port before the Judge of our High Court of Admiralty of England, or his surrogate, or before the Judge of such other Admiralty Court within our dominions lawfully authorized as aforesaid, or such person or persons as shall be lawfully commissioned in that behalf, to be sworn and examined upon such interrogatories as shall tend to the discovery of the truth concerning the interest or property of such ship or ships, vessel or vessels, and of the goods, merchandises, and other effects found therein; and the taker shall be further obliged at the time he produceth the company to be examined, and before any monition shall be issued to bring and deliver into the hands of the Judge of the High Court of Admiralty of England, his surrogate, or Judge of such other Admiralty Court within our dominions lawfully authorized, or others commissioned as aforesaid, all such papers, passes, sea briefs, charter parties, bills of lading, cockets, letters, and other documents and writings, as shall be delivered up or found on board any ship; the taker or one of his chief officers, or some other person who shall be present at the capture, and saw the said papers and writings delivered up, or otherwise found on board at the time of the capture, making oath that the said papers and writings are brought and delivered in as they were received and taken, the same being first numbered and the number specified in the affidavit without any fraud, addition, subduction, or embezzlement, or otherwise accounting for the same upon oath to the satisfaction of the Court.

IV.—That the ships, vessels, goods, wares, merchandises, and effects, taken by virtue of letters of marque and reprisals as aforesaid, shall be kept and preserved, and no part of them shall be sold, spoiled, wasted, or diminished; and that the bulk thereof shall not be broken, before judgment be given in the High Court of Admiralty of England, or some other

Court of Admiralty lawfully authorized in that behalf, that the ships, goods, and merchandises are lawful prize.

V.—That if any ship or vessel belonging to Us or our subjects, shall be found in distress by being in fight, set upon, or taken by the enemy, or by reason of any other accident, the commanders, officers, and company of such merchant ships or vessels as shall have letters of marque and reprisals as aforesaid, shall use their best endeavours to give aid and succour to all such ship and ships; and shall, to the utmost of their power, labour to free the same from the enemy, or any other distress.

VI.—That the commanders or owners of such ships and vessels, before the taking out letters of marque and reprisals, shall make application in writing, subscribed with their hands, to our High Admiral of our United Kingdom of Great Britain and Ireland, or our commissioners for executing that office for the time being; or the lieutenant or judge of the said High Court of Admiralty, or his surrogate, and shall therein set forth a particular, true, and exact description of the ship or vessel for which such letter of marque and reprisal is requested, specifying the burden of such ship or vessel, and the number and nature of the guns, and what other warlike furniture and ammunition are on board the same; to what place the ship belongs, and the name or names of the principal owner or owners of such ship or vessels, and the number of men intended to be put on board the same, and for what time they are victualled, also the names of the commanders and officers.

VII.—That the commanders of ships and vessels having letters of marque and reprisals, as aforesaid, shall hold and keep, and are hereby enjoined to hold and keep, a correspondence by all conveniences, and upon all occasions, with our High Admiral of our United Kingdom of Great Britain and Ireland, or our Commissioners for executing that office for the time being, or their secretary, so as from time to time to render and give him or them not only an account or intelligence of their captures and proceedings by virtue of such commission, but also of whatever else shall occur unto them, or be discovered and declared unto them, or found out by them,

or by examination of, or conference with, any mariners or passengers of, or in the ships or vessels taken, or by any other ways or means whatsoever touching or concerning the designs of the enemy, or any of their fleets, ships, vessels, or parties, and of the stations, sea-ports, and places, and of their intents therein; and of what ships or vessels of the enemy bound out or home, or where cruising, as they shall hear of; and of what else material in these cases may arrive at their knowledge, to the end that such course may be thereon taken and such orders given as may be requisite.

VIII.—That no commander of any ship or vessel having a letter of marque and reprisal as aforesaid, shall presume, as they will answer it at their peril, to wear any jack, pennant, or other ensign, or colours usually borne by our ships; but that, besides the colours usually borne by merchant ships, they do wear a red jack, with the Union Jack described in the canton at the upper corner thereof near the staffs.

IX.—That no commander of any ship or vessel, having a letter of marque and reprisal as aforesaid, shall ransom, or agree to ransom, or quit, or set at liberty, any ship or vessel, or their cargoes, which shall be seized and taken.

X.—That all captains or commanders, officers of ships, having letters of marque and reprisals, do send an account of, and deliver over, what prisoners shall be taken on board any prizes, to the commissioners appointed, or to be appointed for the exchange of prisoners of war, or the persons appointed in the sea-port towns to take charge of prisoners; and that such prisoners be subject only to the orders, regulations, and directions of the said commissioners; and that no commander or other officer of any ship having a letter of marque and reprisal as aforesaid do presume, on any pretence whatsoever, to ransom any prisoner.

XI.—That in case the commander of any ship having a letter of marque and reprisals as aforesaid, shall act contrary to these instructions, or any such further instructions of which he shall have due notice, he shall forfeit his commission to all intents and purposes, and shall, together with his bail, be proceeded against according to law, and be condemned in costs and damages.

XII.—That all commanders of ships and vessels having letters of marque and reprisals shall, by every opportunity, send exact copies of their journals to the Secretary of the Admiralty, and proceed to the condemnation of their prizes as soon as may be and without delay.

XIII.—That the commanders of ships and vessels having letters of marque and reprisals shall, upon due notice being given to them, observe all such other instructions and orders as we shall think fit to direct from time to time for the better carrying on this service.

XIV.—That all persons who shall violate these or any other of our instructions shall be severely punished, and also required to make full reparation to persons injured contrary to our instructions for all damages they shall sustain by any capture, embezzlement, demurrage, or otherwise.

XV.—That before any letter of marque or reprisal for the purposes aforesaid shall issue under seal, bail shall be given with sureties before the Lieutenant and Judge of our High Court of Admiralty of England or his surrogate, in the sum of three thousand pounds sterling if the ship carries above one hundred and fifty men; and if a less number, in the sum of fifteen hundred pounds sterling; which bail shall be to the effect and in the form following:—

Which day, time, and place personally appeared and who submitting themselves to the jurisdiction of the High Court of Admiralty of England, obliged themselves, their heirs, executors, and administrators unto our sovereign lord the king, in the sum of pounds of lawful money of Great Britain to this effect, that is to say, That whereas is duly authorized by letters of marque and reprisals, with the ship called the of the burden of about tons, whereof he, the said goeth master, by force of arms to attack, surprise, seize, and take all ships and vessels, goods, wares, and merchandises, chattels, and effects, belonging to France, or to any persons being subjects of France, or inhabiting within any of the territories of France, saving always such exceptions as his Majesty may at any time or times hereafter be pleased to declare, excepting only within

the harbours or roads within shot of the cannon of princes and states in amity with his Majesty; and whereas he, the said hath a copy of certain instructions, approved of and passed by his Majesty in council, as by the tenor of the said letters of marque and reprisals and instructions thereto, relating more at large appeareth. If therefore nothing be done by the said or any of his officers, marines or company, contrary to the true meaning of the said instructions and of all other instructions which may be issued in like manner hereafter, and whereof due notice shall be given him; but that such letters of marque and reprisals aforesaid, and the said instructions shall in all particulars be well, and duly observed and performed, as far as they shall the said ship, master and company, any way concern; and if they shall give full satisfaction for any damage or injury which shall be done by them or any of them, to any subjects of his Majesty, or of any foreign state in amity with his Majesty; and also shall duly and truly pay or cause to be paid to his Majesty, or the customers or officers appointed to receive the same for his Majesty, the usual customs due to his Majesty of and for all ships and goods, so as aforesaid taken and adjudged for prize—And moreover, if the said shall not take any ship or vessel, or any goods or merchandise belonging to the enemy or otherwise liable to confiscation, through consent or clandestinely, or by collusion, by virtue, colour, or pretence, of his said letters of marque and reprisals, that then this bail shall be void and of none effect; and unless they shall so do, they do all hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, wheresoever the same may be found, to the value of the sum of pounds before mentioned. And in testimony of the truth thereof, they have hereunto subscribed their names.

By command of His Royal Highness the Prince Regent, in the name and on the behalf of His Majesty.

(Signed) SIDMOUTH.

APPENDIX D.

American Privateers.

Notes on Henry Wheaton's *Digest of the Law of Maritime Captains and Prizes.* Original edition, New York, 1815.

Page 42. By the Act of Congress of 1812, concerning letters of marque, prizes and prize-goods, it is provided that before any commission of letters of marque and reprisal shall be issued, the owner or owners of the ship or vessel for which the same shall be requested by the commander for the time being, shall give bond to the United States with at least two responsible sureties, not interested in such vessel in the penal sum of 5000 dollars ; or, if such vessel be provided with more than 150 men, then in the penal sum of 10,000 dollars; with condition that the owners, officers and crew, who shall be employed on board such commissioned vessels shall and will observe the treaties and laws of the United States, and the instructions which shall be given them according to law for the regulation of their conduct; and will satisfy all damages and injuries which shall be done or committed contrary to the tenor thereof by such vessel, and to deliver up the same when revoked by the President of the United States.

Page 45. By the law of the United States, it is enacted that if any citizen shall, within the territory or jurisdiction of the United States accept and exercise a commission to serve a foreign prince or state in war, by land or sea, the person so offending shall be guilty of a high misdemeanour, and shall be fined not more than 2000 dollars, and shall be imprisoned not exceeding three years. And it is likewise provided that if any person shall within any of the ports, harbours, bays, rivers, or other waters of the United States fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the fitting out and arming of any ship or vessel, with intent

that such ship or vessel shall be employed in the service of any foreign prince or state, to cruize or commit hostilities upon the subjects, citizens or property of another foreign prince or state, with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States for any ship or vessel, to the intent that she may be employed as aforesaid, every such person so offending shall upon conviction be adjudged guilty of a high misdemeanour, and shall be fined and imprisoned at the discretion of the Court in which the conviction shall be had, so as the fine to be inflicted shall in no case be more than 5000 dollars, and the term of imprisonment shall not exceed three years, and every such ship or vessel with her tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof shall be forfeited, one-half to the use of any person who shall give information of the offence, and the other half to the use of the United States. And by a subsequent Act, it is also provided that if any citizen of the United States shall, *without the limits of the same*, fit out or procure to be fitted out, or knowingly be concerned in the fitting out of a privateer for the purpose of cruizing against the subjects of a nation at amity with the United States or shall take the command or serve on board of such privateer, or purchase any interest in the same, he shall be adjudged guilty of a high misdemeanour and be punished by a fine not exceeding 10,000 dollars and imprisonment not exceeding ten years.

THE END.